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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 243.

WILLIAM G. WINSLOW AND HEZEKIAH J. WINSLOW, APPELLANTS,

vs.

BLISS O. WILCOX, OWNER AND CLAIMANT OF THE SCHOONER S. S. OSBORNE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

FILED SEPTEMBER 13, 1879.

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due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold, pursuant to the prayer of the said libel, that they be and appear before the said court on the 1st day of the session to be held at the city of Cleveland, in and for the northern district of Ohio, on the first Monday in October next, at ten o'clock in the forenoon of the same day (if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction), then and there to interpose a claim for the same, and to make their allegations in that behalf.

And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the Hon. Charles T. Sherman, judge of the said court, at the city of Cleveland, this 6th day of September, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States of America the 97th.

[SEAL.] EARL BILL, *Clerk*,
By CHAS. H. BILL, *Deputy*.

WILLEY, CAREY & TERRELL,
Proctors for Libellant.

Return.

NORTHERN DISTRICT OF OHIO, *ss:*

On the 6th day of September, A. D. 1872, I made due service of this writ, at the port of Cleveland, in said district, by attaching the within described property, and have the same now in custody, subject to the further order of the court.

I also left on board of said vessel a true copy of this writ, and appointed James Harden custodian.

Afterwards, to wit, on the 12th day of September, 1872, Bliss O. Wilcox, claimant, having given stipulation, with surety to the satisfaction of the court, to answer any decree in this cause, by direction of said court said property was released from said attachment and redelivered to claimant; whereupon I omitted to issue proclamation herein ordered.

N. B. PRENTICE,
U. S. Marshal,
By JOHN O'DELL, *Deputy*.

Bond.

Know all men by these presents, that we, Bliss O. Wilcox as principal, and J. Emery Bailey, and Thomas Courtwright as sureties are held and firmly bound unto William G. Winslow and Hezekiah J. Winslow in the sum of seventeen thousand dollars, lawful money of the United States, to be paid unto the said William G. Winslow and Hezekiah J. Winslow, their executors, administrators, or assigns; to which payment well and truly to be made we bind ourselves, and each of us, jointly and severally, and each of our heirs, executors, and administrators firmly by these presents. Sealed with our seals, and dated this seventh day of September, in the year of our Lord one thousand *and* eight hundred and seventy-two.

Whereas a libel was filed in the district court of the United States for the northern district of Ohio, on the sixth day of September, 1872, by William G. Winslow and Hezekiah J. Winslow, against the schooner S. S. Osborne, her boats, tackle, apparel, and furniture, in a certain

action, &c., civil and maritime, for collision therein alleged to be due and owing to the said William G. Winslow and Hezekiah J. Winslow, amounting to eight thousand and five hundred dollars.

6 The condition of this obligation is such, that if the above bounden Bliss O. Wilcox, J. Emery Bailey, and Thomas Courtwright shall abide and answer the decree of this or any appellate court in such cause, then the above obligation to be void, otherwise to remain in full force and virtue.

B. O. WILCOX. [SEAL.]
J. EMERY BAILEY. [SEAL.]
THOMAS COURTWRIGHT. [SEAL.]

Sealed and delivered in presence of—
J. R. OSBORNE,
S. M. SKIDMORE.

Taken and acknowledged before me by B. O. Wilcox this 7th day of September, 1872, at Cleveland, Ohio.

CHAS. H. BILL, [SEAL.]
U. S. Commissioner for the Northern District of Ohio.

UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

Bliss O. Wilcox being sworn for himself, says, that he is worth seventeen thousand dollars over and above all of his just debts and liabilities.

Sworn before me, this 7th day of September, 1872.

CHAS. H. BILL,
U. S. Commissioner for the Northern District of Ohio.

I hereby approve of the sureties in the within bond.
(Signed) C. T. SHERMAN, *Judge.*

7 Taken and acknowledged by J. Emery Bailey and Thomas Courtwright before me this 11th day of September, A. D. 1872.

JOHN R. OSBORNE,
U. S. Commissioner for the Northern District of Ohio.

Alias warrant of arrest.

NORTHERN DISTRICT OF OHIO, *ss:*

The President of the United States of America to the marshal of the northern district of Ohio, greeting:

Whereas a cross-libel was filed in the district court of the United States, for the northern district of Ohio on the 11th day of December, in the year of our Lord one thousand eight hundred and seventy-three, by Bliss O. Wilcox against the schooner American Union, her boats, tackle, apparel and furniture, and William G. Winslow and Hezekiah J. Winslow in a cause of collision, civil and maritime, for the reasons and causes in the said cross-libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said property may be cited in general and special to answer the premises, and due proceedings being had, that the said property may for the causes in the said cross-libel mentioned, be condemned and sold to pay the demands of the cross-libellant.

You are therefore hereby commanded to arrest the said property and to detain the same in your custody until the further order of
8 the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having any thing to say why the same should not be condemned and sold pursuant to the prayer of the said cross-libel, that they be and appear before the said court on the first day of the session thereof, to be held in the city of Cleveland, in said district, on the first Monday in November next, at ten o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make allegations in that behalf.

And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the Hon. Chas. T. Sherman, judge of the said court at the city of Cleveland, in said district, this 14th day of October, in the year of our Lord one thousand eight hundred and *thirteen*, and of the Independence of the United States of America the 98th.

[SEAL.] EARL BILL, *Clerk.*
By CHAS. H. BILL, *Deputy Clerk.*

Return.

NORTHERN DISTRICT OF OHIO, *ss:*

On the 14th day of October, A. D. 1873, I arrested the within described property at Cleveland, Ohio, and have the same now in custody subject to the further order of the court.

9 I also delivered a true copy of this writ, duly certified, to B. H. Jones, captain of said schooner American Union, and appointed D. S. Wood keeper.

Afterwards, to wit, on the 15th day of October, A. D. 1873, claimants having given stipulation with surety to the satisfaction of the court to abide any decree of the court in said cause, by order of said court I released said property from arrest and redelivered it to claimants.

Thereupon I omitted to issue the proclamation herein ordered.

N. B. PRENTICE,
U. S. Marshal,
By S. M. SMEAD, *Deputy.*

Bond.

Know all men by these presents that we, Hezekiah J. Winslow and William G. Winslow, as principals, and Rufus K. Winslow and B. L. Pennington, as sureties, are held and firmly bound unto Bliss O. Wilcox in the sum of thirty-three thousand eight hundred and eighty-eight and $\frac{22}{100}$ dollars, lawful money of the United States of America, to be paid unto the said Bliss O. Wilcox, his executors, administrators or assigns, to which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated this 15th day of October, in the year of our Lord one thousand eight hundred and seventy-three.

Whereas a cross-libel was filed in the district court of the
10 United States for the northern district of Ohio, on the 11th day of October, A. D. 1873, by Bliss O. Wilcox against the schooner American Union, her boats, tackle, apparel and furniture, and William G. Winslow and Hezekiah J. Winslow, in a certain action, &c., civil

and maritime, for collision therein alleged to be due and owing to the said Bliss O. Wilcox, amounting to sixteen thousand nine hundred and forty-four dollars and thirty-six cents.

The condition of this bond is such that if the above-bounden Hezekiah J. Winslow and William G. Oviatt, Rufus K. Winslow and B. L. Pennington shall abide and answer the decree of this or any appellate court in such cause, then the above obligation to be void; otherwise to remain in full force and virtue.

RUFUS K. WINSLOW. [SEAL.]
B. L. PENNINGTON. [SEAL.]

Sealed and delivered in presence of—
S. M. SMEAD.

Taken and acknowledged before me this 15th day of October, 1873, at Cleveland, Ohio.

CHAS. H. BILL, [SEAL.]
U. S. Commissioner for the N. D. O.

I hereby approve of the sureties in the within bond.
(Signed) C. T. SHERMAN, *Judge.*

11 *Libel.*

In admiralty.

To the judge of the district court of the United States for the northern district of Ohio:

The libel of William G. Winslow and Hezekiah J. Winslow, of the city of Buffalo, in the State of New York, against the schooner S. S. Osborn, whereof is or lately was master, her boats, tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein, in a cause of collision, civil and maritime, and thereupon the said libellants do allege and propound as follows:

First. That your libellants, at the time when the cause of action hereinafter stated arose, were the owners of the schooner American Union, which said schooner, as well as the aforesaid schooner S. S. Osborn, were vessels of twenty tons burthen and upwards, enrolled and licensed for the coasting trade, and employed in the business of commerce and navigation between parts and places in different States and Territories upon the lakes and navigable waters connecting said lakes, within the true intent and meaning of the act of Congress.

Second. That on the 5th day of August, A. D. 1872, the said schooner American Union, being then, and also at the time of the collision hereinafter mentioned, tight, strong, staunch, and in every way well manned, tackled, appareled, and appointed, and having the usual and necessary complement of officers and men stationed at their proper posts and upon the lookout for the protection and safety of the
12 said vessel, set sail on a voyage from the port of Cleveland, in the State of Ohio, to the port of Escanaba, in the State of Michigan, sailing light without cargo; the said schooner American Union proceeded safely on her said voyage until Friday, August 9th, 1872, at 1 o'clock a. m., when she came to an anchor at Sand Bay, on the east side of Beaver Island, in Lake Michigan. At 9 o'clock p. m. of said last-named day the said schooner hoisted anchor and proceeded on her said voyage; at about 12 o'clock midnight, the said schooner sailing

close-hauled by the wind, with the wind about northwest by north, the course of the schooner being about due west, the green light of a vessel was made about two points of' her lee or port bow. The said schooner American Union was kept steadily on her course, and about ten or fifteen minutes after said green light was made the vessel bearing it proved to be said schooner S. S. Osborn, ran into and collided with said schooner American Union, striking her on her port bow, about fifteen feet from her stern, crushing in her planks, frames, and ceiling, breaking her clamps and breast-hooks, tearing her flying-jib, springing her jib-boom, breaking her head-gear, and doing other damage to her. At the time of said collision, and for half an hour prior thereto, the night was bright and starlight. At the time of said collision, and for an hour prior thereto, the wind was about northwest by north. At the time of said collision, and for an hour prior thereto, the course of the said schooner American Union was due west. At the time
13 of said collision and for an hour prior thereto, the said schooner American Union was sailing close-hauled full and by with starboard tacks aboard; that when the light of the colliding vessel was first made, and from that time up to the moment of the collision, the course of the colliding vessel was about northeast with the wind all the while free to her; that at the time of said collision, and for an hour prior thereto, the officers and men of the schooner American Union, were each and all at their respective proper places and posts, vigilant and attentive to their respective duties, and during all of said time the lights of the said schooner American Union were properly placed and screened and brightly burning, and in full view of a vessel approaching, as was the colliding vessel.

That said collision happened solely by reason of the following neglects and improper conduct of those in charge of the colliding vessel, which proved to be the schooner S. S. Osborn:

First. In not giving way and keeping clear of the schooner American Union, as they were in duty bound to do.

Second. In not having competent and skilful officers in command of said schooner S. S. Osborn.

Third. In not having a lookout properly placed and stationed to promptly make the lights of an approaching vessel.

Fourth. In not making or watching the lights of the schooner American Union, or understanding her approach and movements so as to avoid her, as they were in duty bound to do, since the lights of
14 said schooner American Union, were in full and unobstructed view of those in charge of said schooner S. S. Osborn for a long time prior to said collision, and by reason of said neglects said schooner American Union suffered damage from said collision to the amount of three thousand dollars, and is delayed in making necessary repairs by reason thereof for the space of twenty-two days, her charter value being two hundred and fifty dollars per day, her damage from said collision amounting in all to the sum of eighty-five hundred dollars.

For which your libellants claim they have a lien upon said vessel enforc'able in this honorable court.

Third. That the aforesaid collision and damage was occasioned solely by the negligence, unskillfulness and carelessness of the persons navigating the said schooner S. S. Osborn, and not by or through any fault, negligence or improper conduct on the part of your libellants, said vessel, her master, or crew.

Fourth. That since the aforesaid collision, your libellants have applied in a friendly manner, to the owners of the said schooner S. S.

Osborn, and requested them to settle for the damages sustained by your libellants as above mentioned, but the said owners have refused to pay the same to these libellants, or any part thereof.

Fifth. That all and singular the premises are true, and that the said schooner S. S. Osborn, is now lying at the port of Cleveland, in the district aforesaid.

15 Wherefore your libellants pray that process in due form of law, according to the course and practice of this honorable court, in cases of admiralty and maritime jurisdiction, may issue against the said schooner S. S. Osborn, her boats, tackle, apparel and furniture; and that all persons having any interest therein, may be cited to appear and answer all and singular the matters aforesaid, and that this honorable court will be pleased to decree the payment of the damages aforesaid, with costs; and that the said vessel may be condemned and sold to pay the same, and that your libellants may have such other and further relief as in law and justice they are entitled to receive.

WM. G. WINSLOW.
HEZEKIAH J. WINSLOW.

WILLEY, CAREY AND TERRELL,
Libellants Proctors.

NORTHERN DISTRICT OF OHIO, *ss:*

Be it remembered, that on this 23rd day of August, A. D. 1872, before me at Cleveland, Ohio, personally appeared the within-named Wm. G. Winslow and made solemn oath that he had heard and read the foregoing libel, and knows the contents thereof, and that the same is true, as to his own knowledge, except as to those matters and things stated to be on his information and belief, and as to those matters and things he believes to be true.

[SEAL.] CLIFTON B. BEACH,
Notary Public.

16 *Claim.*

In the district court of the United States in and for the northern district of Ohio.

WILLIAM G. WINSLOW AND HEZEKIAH J. Winslow
vs.
THE SCHOONER S. S. OSBORN.
} In admiralty. Claim.

Now comes William Seamens, master of the said schooner S. S. Osborn, and being duly sworn on his oath, says that Bliss O. Wilcox, of Painesville, in said district, is the sole owner of said schooner, and her appurtenances, and the said William Seamens in behalf of the said Bliss O. Wilcox, claims the said schooner S. S. Osborn, her tackle, apparel and furniture, against the said libellants and all persons lawfully intervening for their interest therein, for the purpose of enabling said Wilcox to enter into an undertaking, as required by law, to the marshal of said district to release said vessel from seizure.

WM. SEAMENS.

Subscribed in my presence, and sworn to before me, by the said William Seamens, this sixth day of September. A. D. 1872.

CHARLES H. BILL,
U. S. Commissioner.

17 *Answer.*

In the district court of the United States in and for the northern district of Ohio, in admiralty.

To the honorable Charles T. Sherman, judge of said court:

The answer and claim of Bliss O. Wilcox, sole owner of the schooner S. S. Osborn, to the libel and complaint of William G. Winslow and Hezekiah J. Winslow against the said schooner, her tackle, &c., alleges as follows, to wit:

First. That the said respondent knows not whether the said libellant', at the time of the happening of the collision in said libel mentioned, were or were not the owners of said schooner American Union, and he therefore doth not admit or deny the same, but leaves the same to be proved. He admits that both said schooner American Union and said schooner S. S. Osborn were, at the time in said libel mentioned, vessels of twenty tons burthen and upwards, and were enrolled and licenced in said libel averred.

Second. The said respondent, from information, admits that said schooner American Union sailed from said port of Cleveland on or about the 5th day of August, A. D. 1872, on a voyage to the port of Escanaba, Michigan, sailing light, without cargo, and that she proceeded safely on said voyage until about one o'clock a. m. of said
18 ninth day of August, A. D. 1872, and that she then came to an anchor at said Sand Bay, and that at or about nine o'clock of same day she hoisted anchor and proceeded on her said voyage.

But he denies that said schooner American Union was, at the time she so sailed on said voyage, or at the time of said collision, tight, staunch, or strong, or that she was well manned, tackled, appareled, or appointed, or that she had the usual or necessary complement of officers or of men on board, or that they were all stationed at the proper posts, or were upon the lookout for the safety of said vessel.

And from information, the said respondent admits that about midnight of said ninth day of August, A. D. 1872, a green light of a vessel was made by those on board the said schooner American Union, but whether her course was then about due west, or whether said light was on her port bow, or what the precise bearing of said light from said schooner American Union was when it was so discovered, he is ignorant, and he therefore does not admit that the course of said schooner American Union was then about due west, or that said light, when discovered, was off her lee or port bow; and he denies that said schooner American Union was then sailing close hauled by the wind, or that she then had the wind from about northwest by north; on the contrary, he avers that the wind was then from about north by east, and that said schooner American Union was then sailing with the wind free or abaft
19 her beam.

Third. The respondent admits that said schooner S. S. Osborn was the vessel which carried said green light which was seen by those on board said schooner American Union, and that after said light was seen by those on board of said schooner American Union, she was kept steadily on her course, and that subsequently a collision occurred between said vessels, but whether or not said collision occurred within about ten or fifteen minutes after said green light was seen, he is ignorant, but he believes, and so alleges and charges, that said green light of said schooner S. S. Osborn was seen by those on board said schooner American Union for a much longer time than fifteen minutes before said

collision. He avers that he has no personal knowledge of the injury done to said schooner American Union by said collision, or of the amount of damage occasioned to her thereby, but from the best information he can obtain, he denies that by said collision the planks, frame, or ceiling of said schooner American Union were crushed in, or that her clamps or breast-hook were broken, or her flying-jib torn, or her jib-boom sprung, or her head-gear broken, or that she was otherwise damaged or injured.

On the contrary, he avers that the injury done to said schooner American Union by said collision was very slight and trifling, and was not such as to disable her or hinder her from continuing in her business of commerce and navigation, or to necessitate any delay on her part on account thereof.

Fourth. The said respondent denies that at the time of said collision, or for half an hour prior thereto, the night was bright or starlight, or that at the time of said collision, and for an hour prior thereto, the wind was about northwest by north, or that at the time of said collision, or for an hour prior thereto, the said schooner American Union was sailing close hauled, full, and by. On the contrary, he alleges that at the time of said collision, and for more than one hour prior thereto, the night was dark, thick, and cloudy, with no moon or stars visible, and that at the time of said collision, and for more than one hour prior thereto, the wind was north by east, or very near that point, and that at the time of said collision, and for more than one hour prior thereto, the said schooner American Union was sailing with the wind free, or abaft her beam, and said schooner S. S. Osborn was sailing close hauled by the wind.

And he denies that said schooner S. S. Osborn, at the time of said collision, or at any time during one hour prior thereto, had the wind free or abaft her beam.

And he further denies that at the time of said collision, or for one hour prior thereto, the officers or men of said schooner American Union were at their respective proper posts, or were vigilent or attentive to their respective duties.

And he denies that at the time of said collision, or at any time during one hour prior thereto, the lights of said schooner American Union were properly placed or screened, or were brightly burning, or that they were in full view of a vessel approaching, as was said schooner S. S. Osborn.

On the contrary, he avers that the lights of said schooner American Union, at the time of said collision, and for more than one hour prior thereto, were improper and insufficient and were not properly placed or screened, and were not so placed, fixed, or screened as to th'o' a uniform or an unbroken light from right ahead to two points abaft the beam, and were not so placed, fixed or screened as required by law; and were not in view of, and could not be seen by those on board a vessel approaching her as was said schooner S. S. Osborn.

Fifth. The said respondent denies that said collision happened through or by reason of any neglect, unskillfulness, carelessness, or improper conduct whatever on the part of any of those in charge of said schooner S. S. Osborn; or that the said schooner S. S. Osborn was in duty bound to give way to or keep clear of said schooner American Union, or that the lights of said schooner American Union were in full or unobstructed view of those on board of said schooner S. S. Osborn prior to said collision.

On the contrary, he avers that said collision happened without

22 any fault on the part of said schooner S. S. Osborn, and without any fault, and without any want of competence, want of care, or want of skill on the part of any of those engaged in her navigation.

And he alleges and charges that said collision was occasioned solely by and through the faults and negligence on the part of said schooner American Union, and those engaged in her navigation; and among other things he alleges that it was the duty of said schooner American Union to have kept out of the way of said schooner S. S. Osborn, as she could and should have done, but which she did not do.

That the signal-lights of said schooner American Union were improper and insufficient, and were improperly placed and fixed, and that said schooner American Union, and those engaged in her navigation were otherwise unskillful, negligent, and in fault.

Sixth. The said respondent denies that said schooner American Union suffered any damage whatever by reason of any neglect or improper conduct on the part of said schooner S. S. Osborn, her officers or crew, or that she suffered any damage from said collision to the amount of three thousand dollars, or that she was delayed in making necessary repairs by reason thereof for the space of twenty days, or that her charter value was two hundred and fifty dollars per day, or that
23 her damages from said collision amounted in all to the sum of eight thousand five hundred dollars, or that said libellants have any claim against or lien whatever on said schooner S. S. Osborn, therefor.

And the said respondent prays that full and strict proof be required of said libellants, of and concerning each and every allegation and statement in said libel contained not herein specifically and distinctly admitted; and that this honorable court will dismiss said libel and condemn said libellants in costs, and otherwise right and justice in the premises to administer, as to this honorable court may seem fit.

B. O. WILCOX.

PRENTISS & VARCE,
Proctors for Respondent.

District court of the United States for the northern district of Ohio.

Be it remembered that on this seventh day of December, A. D. 1872, before me, at Cleveland, in said district, personally appeared the within named Bliss O. Wilcox and made solemn oath that he had read the foregoing answer, and knows the contents thereof, and that the same is true to his own knowledge, except as to those matters and things stated to be on his information and belief, and as to those matters and things he believes it to be true.

B. O. WILCOX.

Sworn to before me, and subscribed in my presence by the
24 said B. O. Wilcox, this seventh day of December, A. D. 1872.

[SEAL.] GEORGE D. HENSDALE,
Notary Public.

Cross-libel.

In the district court of the United States within and for the northern district of Ohio. In admiralty.

To the honorable Charles T. Sherman, judge of said district court:

The libel and complaint of Bliss O. Wilcox, of Painesville, in said district, against the schooner American Union, her boats, tackle, apparel, and furniture, and against William G. Winslow and Hezekiah J. Winslow, her owners, and against all persons lawfully intervening for their interest therein, in a cause of collision, civil and maritime, doth allege and articulately propound as follows:

First. That said schooner is a vessel of more than twenty tons burthen, now lying at , and within the admiralty and maritime jurisdiction of this court; and at the time when the cause of action hereinafter mentioned accrued and arose, as is hereinafter stated, was enrolled and licenced for the coasting trade, and was employed
25 in the business of commerce and navigation between ports and places in different States and Territories of the United States, upon the lakes and navigable waters connecting the said lakes, within the true intent and meaning of the act of Congress.

Second. That on or about the ninth day of August, A. D. 1872, the schooner S. S. Osborn, whereof your libellant then was and yet is the sole owner, and which is a vessel of more than twenty tons burthen, and enrolled and licensed for the coasting trade, between ports and places in different States and Territories upon the lakes and navigable waters aforesaid, being then, and also at the time of the collision hereinafter mentioned, tight, staunch, strong, and in every respect well manned, tackled, appareled, and appointed, and having the usual and proper complement of men and officers on board and stationed at their proper posts, and upon the outlook for the safety and protection of said vessel, set sail upon a voyage from the port of Escanaba, in the State of Michigan, to the port of Erie, in the State of Pennsylvania, having on board a cargo of one thousand and fourteen tons of iron ore.

Third. That said schooner S. S. Osborn proceeded safely on said voyage until about midnight of said day, at or about which hour the wind then being, and having been for more than one hour prior thereto, from north by east, or from very near that point, and the night dark, thick, and cloudy, without moon or stars, said schooner S. S. Osborn then being, and for a long time prior thereto having been, steering
26 east by north half north, close hauled, with the wind on her port side, and then and for a long time prior thereto having and displaying good and sufficient signal-lights, properly placed, fixed, and screened according to law, and burning brightly, and good and sufficient watch and outlook kept to all points, the watch on board said schooner Osborn heard some one hail them from an approaching vessel which they were then unable to see; that after a very short interval of time said hail was followed by another from the same vessel, which the watch on board said schooner S. S. Osborn then discovered approaching, close aboard said schooner Osborn, a little on her lee bow, almost dead ahead, and so close to said schooner Osborn that there was not time for said schooner Osborn to do anything to avoid it before a collision occurred between said vessels, said vessel from which said hail was heard, and which proved to be the schooner American Union, striking said schooner Osborn on her port bow, and carrying away her

bow-sprit, jib-boom, foremast, and windlass, and crushing in her port bow, and otherwise damaging her hull forward, and wholly disabling her from proceeding further on her said voyage.

Fourth. That at the time of said collision, and for more than one hour prior thereto, said schooner S. S. Osborn was sailing close hauled by the wind, heading east by north half north, or very nearly on that course, and had her proper lights in good and proper condition, well trimmed and burning brightly, and so placed and fixed as to
27 throw an unbroken light from right ahead to two points abaft her beam, and properly screened according to law, and clearly visible at a distance of two miles to a vessel approaching as was said schooner American Union; that said schooner S. S. Osborn, at the time of said collision and for a long time prior thereto, had her full and proper complement of officers and men, who were each and all at their respective proper posts and places, and vigilant and attentive to their respective duties; that at the time of said collision and for more than one hour prior thereto the night was dark, thick and cloudy, with no moon or stars, and the wind during all of said time was steady from north by east, or very near that point.

Fifth. That at the time when said collision occurred, and for a long time prior thereto, the signal lights carried by the said schooner American Union were improper and insufficient, and were improperly placed and fixed, and fixed on her main rail, close to her mizzen rigging, and were not so placed or fixed as to throw the light thereof from right ahead to two points abaft the beam, and were not so placed or fixed as required by law, and were not so placed or fixed as they should have been in order that one or both of them could have been seen by the watch and outlook of the said schooner S. S. Osborn while the two vessels approached each other as they did; that the libellant is ignorant of the precise course on which said schooner American
28 Union was proceeding before said collision occurred, and of her precise bearing from said schooner S. S. Osborn at and before said first hail was heard, but from information the said libellant alleges and charges that the said schooner American Union was so proceeding with the wind free or abaft her beam and sailing light, and was so proceeding that it was the duty of the said schooner American Union and those on board of her engaged in her navigation, to keep out of the way of said schooner S. S. Osborn, as they could and should have done.

Sixth. The said libellant alleges and charges that the starboard light of said schooner S. S. Osborn was plainly seen by those on board of said schooner American Union for a long time prior to said collision, and in ample time to enable said schooner American Union to have kept out of the way of said schooner S. S. Osborn, and avoided a collision with her, which those in charge of said schooner American Union were in duty bound to do; that by reason of the insufficient and improper quality and condition of said lights so carried by said schooner American Union, and by reason of the improper and unsuitable position of the same, said lights were not visible to those on board of said schooner S. S. Osborn, notwithstanding a good and proper lookout was kept therefor by those on board said schooner S. S. Osborn and
29 said lights were not seen, and by reason of their condition and position could not be seen by those on board of said schooner S. S. Osborn until it was too late for those on board said schooner S. S. Osborn to avert a collision, although they did everything which it was possible to do to avert a collision after they so discovered said schooner American Union approaching them as aforesaid.

That it was the duty of said schooner American Union, having the wind free, to have kept out of the way of and avoided said schooner S. S. Osborn, which was closely hauled by the wind, which the said schooner American Union had ample time to do after the said light of said schooner S. S. Osborn was seen by those on board of said schooner American Union, as aforesaid. Yet the said schooner American Union did not, nor did any of those on board of her, keep out of the way of said schooner S. S. Osborn, or avoid, or in any manner attempt to avoid, said collision, but did continue on her course with ful' knowledge of the approach of said schooner S. S. Osborn, and did, recklessly, carelessly, negligently, and unskillfully run into and col'ide with said schooner S. S. Osborn.

Seventh. That said collision was not caused by or through any fault or negligence on the part of said schooner S. S. Osborn, her officers or crew, but occurred without any fault on the part of said schooner S. S. Osborn, and without any fault and without any want of competence, want of care, or want of skill on the part of any of those engaged in her navigation; and the said libellant alleges and charges that
30 *that* the same was caused wholly by and through the fault, negligence, incompetence, and unskillfulness of the officers and crew of said schooner American Union, among other things, in not causing suitable or proper signal lights in proper positions on board of said schooner American Union, and in not keeping out of the way of and 'voiding said schooner S. S. Osborn, as they could and should have done, when her approach was perceived by those on board of said schooner American Union, and in not using every reasonable and practicable effort to avoid said collision, as said schooner American Union and those engaged in her navigation were in duty bound to do, and in otherwise failing and neglecting to avoid said collision.

Eighth. That through and by reason of said gross carelessness, incompetence, and neglect of duty on the part of those on board of said schooner American Union, and engaged in her navigation, and by reason of said collision said schooner S. S. Osborn suffered damage to the amount of six thousand and forty-four and $\frac{36}{100}$ dollars, and was obliged to be towed from near the place where said collision occurred to the port of Cleveland, in said district, for repairs, the expense and cost of which said towing service was nine hundred dollars, and has been delayed in and about the repairing of said damage for the space of forty-seven days, and has, by reason of said collision, been subjected to other expenses.

31 That the charter value of said schooner S. S. Osborn during said period was and is two hundred and fifty dollars per day, and that her total damage by reason of said collision is sixteen thousand nine hundred and forty-four and $\frac{36}{100}$ dollars, for which the libellant claims a lien upon said schooner American Union, her boats, tackle, apparel, and furniture, and which said sum the said libellant's damage, so by him sustained, the said schooner American Union, her master, and owners, although often requested to pay, aver, have, and still do utterly refuse to pay.

A schedule of the libellant's said damages is hereto attached, marked A.

Ninth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of this honorable court.

Wherefore, your libellant prays that process in due form of law, according to the course and practice of said honorable court in cases of admiralty and maritime jurisdiction, may issue against the said schooner

American Union, her boats, tackle, apparel, and furniture, wheresoever the same shall be found, and that all persons having, or pretending to have any right, title, or interest therein, may be cited to appear, and to answer, all and singular, the matters hereinbefore set forth; and that this honorable court will be please' to pronounce for the damages aforesaid, and to decree the payment thereof to your libellant, with costs; and for such other relief in the premises as shall to law and justice appertain, and also to condemn the said schooner Amer-
32 ican Union, her boats, tackle, apparel, and furniture, that the same be sold to pay said damages and costs.

B. O. WILCOX.

PRENTISS & VORCE,
Proctors for Libellant.

District court of the United States for the northern district of Ohio, ss:

Be it remembered, that on this seventh day of December, A. D. 1872, before me, at Cleveland, in said district, personally appeared the within-named Bliss O. Wilcox, and made solemn oath that he had heard read the foregoing libel, and knows the contents thereof, and that the same is true to his own knowledge, except as to those matters and things stated to be on his information and belief, and as to those matters and things he believes it to be true.

B. O. WILCOX.

Sworn to before me, and subscribed in my presence, by the said B. O. Wilcox, this 7th day of December, A. D. 1872.

[SEAL.] GEORGE D. HINSDALE,
Notary Public.

33 *Schedule A, referred to in the foregoing libel, and forming part thereof.*

William H. Radcliff, repairs		3,228 65
John O'Neil "		264 94
Upson and Walton "		201 73
A. Larcom "		166 14
S. B. Conklin "		121 44
Northern Transportation Company, towing		150 00
Prop. City of Detroit "		500 00
Tug Kate Williams "		250 00
Hebard, Hawley & Co., repairs		37 40
William H. Radcliff "		225 00
Quayle and Martin (spar and bowsprit)		290 00
William Smith, repairs		410 00
A. T. Van Tassel & Co. "		7 45
Globe Iron Works "		91 61
Time of B. O. Wilcox, capt. & crew in making "		1,000 00
Demurrage, 40 days, @ $250.00		10,000 00
Total amount		16,944 36

Answer to cross-libel.

U. S. district court, northern district of Ohio. In admiralty.

BLISS O. WILCOX
vs.
SCH'R AMERICAN UNION. } Answer.

34 The answer of Hezekiah J. Winslow and William G. Winslow, of Buffalo, New York, to the libel Bliss O. Wilcox alleges and articulately propounds as follows, to wit:

1. That they are the sole, true, and bona fide owners of the schooner American Union.

2. They deny that the schooner Osborn, at the time alleged, had her officers and men properly placed and *and* stationed, or that she had proper officers and men.

They allege she had no competent mate, and that at the time of the collision and for some time prior thereto her lookout was aft and not at his post.

3. They deny that at the time of the collision, or at any time prior thereto, the wind was from north by east, or near that point, or that the night was dark, thick, or cloudy, or that Osborn was steering east by north half north close hauled; they deny that those on board Osborn heard any hail or that the American Union came from dead ahead, or nearly so, or struck the Osborn on her port bow.

4. They deny that at the time of said collision, or for an hour prior thereto, the Osborn was close hauled, or heading at the time of the collision east by north half north, or had her officers or men properly placed or stationed, or vigilant or attentive to their duties.

5. They deny that the lights of the American Union were improper or insufficient, or were improperly placed or fixed, or that they were not visible as required by law, or that they could not be seen by
35 lookout of Osborn; they deny that the American Union had the wind free or abaft the beam, or that it was her duty to keep out of the way.

6. They deny that said collision was not caused by any fault or negligence on the part of the Osborn, or that the same was caused by any fault, negligence, incompetence, or unskillfulness on the part of the American Union.

7. They allege the Union had proper lights, properly placed, and brightly burning at time of and for several hours prior to collision; that the Union was heading west, close hauled, on her starboard tack, with the wind about NW. by N., and allege as in their libel they have already alleged.

Wherefore they pray as they have already in their libel prayed.

WILLEY, TERRELL & SHERMAN,
Proctors for Defendant.

NORTHERN DISTRICT OF OHIO, *ss:*

William G. Winslow, being duly sworn, says that the facts set forth in the foregoing answer are true, as he believes.

WM. G. WINSLOW.

Sworn to and subscribed before me this st day of May, 1877.

EARL BILL,
U. S. Commissioner.

36 Within and for the county of Cuyahoga, in said State, by the governor thereof, and under and by virtue of an act of Congress of said United States authorizing notary publics to take and certify oaths, affirmations, and acknowledgements in certain causes, approved Sept. 16th, 1850, and the act supplementary thereto, approved July 28th, 1854.

UNITED STATES OF AMERICA,
Northern District of Ohio, City of Cleveland,
County of Cuyahoga, and State of Ohio:

Be it remembered that on the 26th day of August, A. D. 1872, I, Clifton B. Beach, a notary public duly appointed, did call and cause to be and personally appear before me at my office, at No. 81 Public Square, in the city of Cleveland, in said northern district of Ohio, in the State aforesaid, Charles O. Ingraham, Edward Ingraham, E. S. Outis, Albert Outis, George Magley, Frank Wicks, Thomas G. Gilkison, Alexander Stewart, and Albert Landreth to testify, and the truth to say, on the part and behalf of the libellants, in a certain suit or matter of controversy now pending and undetermined in the district of Ohio, wherein and Wm. G. Winslow are libellants, and the schooner S. S. Osborn is defendant.

And the said Charles O. Ingraham, being about the age of 30 years, and having been by me first cautioned and sworn to testify the
37 truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, did therefore depose, testify, and say, as follows:

U. S. district court northern district of Ohio. In admiralty.

WILLIAM G. WINSLOW ET AL.
vs.
SCHOONER S. S. OSBORN.
} Depositions taken by consent.

H. L. Terrell appearing on behalf of libellants.
Loren Prentiss, on behalf of defendants.

CHARLES O. INGRAHAM being first duly examined, cautioned, and sworn to speak the whole truth, and nothing but the truth, deposes and says:

Q. 1. State your name, age, residence, and occupation.

A. Charles O. Ingraham; South Haven, Michigan, is my residence; occupation, sailor; age, 30.

Q. 2. How long have you sailed and in what capacity?

A. Have sailed about 20 years. Have been everything except owner; before the mast, mate, second mate, and master. I sailed as second mate 2 seasons, as mate 10 years. Have been master about 2 years.

Q. 3. On what vessel have you been sailing during the past season?

A. On the American Union.

Q. 4. State whether you were on the American Union on her last trip, when she collided with the S. S. Osborn.

A. I was.

Q. 5. State on what voyage your vessel then was, and the particulars of the collision.

38 A. We were bound up from Cleveland to Escanaba; we were light. Don't remember the day we left here. We came to under

Beaver Island, Lake Michigan; wind about southwest; this was about one o'clock in morning; we laid there till about nine or half-past nine the following evening; we got under way about half-past eleven o'clock that night; we shook her up, let her sheets out; we were steering the vessel by the wind at that time; about ten minutes past 12 I made a green light on our port bow; I spoke to the captain, he came on deck; I showed him the light about two (2) points on our lee or port bow; in about five minutes after that we collided; she struck us about fifteen feet from our stern on our port bow; the vessel came alongside and we lashed them together; she struck us coming head on; she broke some of our frame and plank, cat-head, jib-boom, guyes, flying-gibs, broke us up generally.

Q. 6. You say at half-past eleven o'clock you shook her up, what do you mean by that?

A. I mean to get her sheets aft so she would lay closer to the wind.

Q. 7. State in what direction the wind was at eleven and half, and what changes, if any there was, in the wind from that time on until the time of the collision?

A. The wind was northwest by north; it did not change any that I could see up to the time of the collision.

Q. 8. State how you were steering from half past eleven up to the time of the collision.

39 A. We were steering about west, as close as she would go by the wind.

Q. 9. What tacks aboard?

A. Starboard tacks aboard.

Q. 10. State what kind of a night it was.

A. Well, it was a tre'cherous looking night, wasn't a dark night, some stars out.

Q. 11. You may state the conditions of your lights at the time of the collision, and an hour previous.

A. Our lights were forward of the mizzen rigging, setting on the rail outside of the monkey rail, in a screen. They were burning good.

Q. 12. You may state at what rate of speed the vessel was running at the time of the collision, and shortly previous thereto.

A. About 8 knots an hour.

Q. 13. About what direction was the Osborn going when she struck you?

A. I should think she was heading about northeast, as near as I could tell.

Q. 14. Who were on deck at the time of the collision your vessel?

A. I was on deck, the captain and second mate, also George Magley, Thomas Mott. I don't remember the other names.

Q. 15. Whose watch was it?

A. It was the second mate's watch at time of collision.

Q. 16. Who was at the wheel?

A. George Magley.

Q. 17. Who was at the lookout?

A. Thomas Mott.

Q. 18. State how you came to be on deck after twelve o'clock.

40 A. Captain said he was not feeling very well and wanted to know if I would not stay on deck an hour. I told him I would do so.

Q. 19. What position did you occupy on board the American Union at that time?

A. I was 1st mate.

Cross-examination:

Q. 20. How long had you been on deck prior to the collision?

A. Had been on deck all night.

Q. 21. How long had the men that you say were on deck at the time of the collision been on deck?

A. About ten or fifteen minutes.

Q. 22. State the position of each one on deck at and immediately before the collision.

A. There was one (Magley) at the wheel; one (Mott) on the top gallant forecastle; the other one (don't remember his name) was forward.

Q. 23. Give the names of those who had been on deck in the watch prior to those men coming on deck.

A. One of them was E. S. Outis, one Frank Wicks, and A. Outis, C. O. Ingraham, and Captain Parsons. The captain went below a little before twelve. Had been on deck about five minutes, I think, before the vessel struck us. He had been below about ten (10) minutes.

Q. 24. On what part of the vessel were you standing immediately prior to, and at the time of the collision?

A. First I made the vessel's light. I was on our vessel's port quarter, then I went right forward, I got up on the forecastle deck, I
41 started then immediately aft. I stood right at the knee timber heads aft. I thought he was closer than I wanted to see him, and turned and spoke to the captain in his room. He immediately came out. I showed him the green light on our port bow, he told me to go forward and hollar to them to keep off. I went forward and hollowed to them. I see that he was coming into us and I started and ran aft.

Q. 25. What orders if any were given by you or the captain after you saw the lights of the Osborn?

A. All the orders that were given was to keep her steady on the wind, Captain Parsons gave these orders. These were all the orders I heard. I gave none myself.

Q. 26. Who first saw the light of the Osborn, and on what part of the vessel was you standing at that time?

A. I first saw the light. I was standing on the port quarter when I saw it.

Q. 27. How long was that before the collision?

A. I did not pay much attention as to time; eight or ten minutes I should say. The lookout hallowed about the same time I saw the light.

Q. 28. Do you know exactly the course of your vessel at the time of the collision?

A. Her course was full and by the wind, heading due west.

Q. 29. What means have you of knowing that?

A. The way I know it is, the vessel works in about ten points and the wind was northwest by north. I looked at the compass at 12
42 o'clock; I noticed the vessel being on the wind all the time from that time on till I called the captain.

Q. 30. What difference if any would there have been in the position of your sail if the wind had been northeast, and you had been sailing before instead of by the wind?

A. If we had been before the wind our sheets would have been off; we were by the wind and our sheets were hauled flat aft.

Q. 31. What was the actual position of your sails immediately prior to the collision?

A. They were hauled aft by the wind.

Q. 32. How much of a breeze was there that night?

A. Well, sir, I should say our vessel was going about eight knots an hour; we would call it a good breeze.

Q. 33. How long had the wind been in the position it was at the time of the collision?

A. From the time we commenced getting underway until I got the vessel straightened up, about half past eleven, I had been busy with the men and had not noticed the wind much. The captain had charge.

Q. 34. Had you any lights on deck aside from the two you have spoken of and how near were those to the stern of your vessel?

A. No, sir, we had not; I don't know the exact distance, they were forward of and close to the mizzen rigging.

Q. 35. Were those colored lights?

A. Yes, sir. Red and green.

Q. 36. State on which side they were carried respectively.

43 A. The red on the port and green on starboard.

Q. 37. Had the direction of the wind changed any after half past eleven?

A. No, sir.

Q. 38. Had it changed any during that evening?

A. I had'nt paid much attention to the wind till we shook her up. The captain was tending to that.

Q. 39. Where was the vessel at the time you shook her up as you say?

A. She was south and east of the Beaver Island light, we had not got up to the lights yet.

Q. 40. Did you see any light on the Osborn beside the green light?

A. No, sir; we did not.

Q. 41. After the collision did the vessels remain entangled together, and drift before the wind?

A. The vessels came alongside one another, we put a line out and lashed them together. They drifted nearly before the wind, nearly so. No, I don't know as they did, up the lake, if anything, after we got our vessel clear, about seven o'clock in the morning, we dropped the Osborn astern, and got sail on our vessel, and started to tow the Osborn. We were then nearly off the end of Fox Island, within seven or eight miles of the island, a little east.

Q. 42. How far was you from where the collision occurred as near as you can judge?

A. About fifteen miles, I guess.

Q. 43. In what direction from the place of the collision?

A. Can't answer that, don't know what direction.

Q. 44. How far had you proceeded beyond the end of Beaver Island at the time of the collision?

44 A. I should think we were three or four miles past the light.

Q. 45. What changes were made, if any, in the position of the sails of either vessel after the collision?

A. We did not make any change in our vessel, we got one of them in and put it up again; I believe they hauled their sails aft to take them in.

Redirect.

Q. 46. How far could the canvas of the vessel be seen that night at about the time of the collision?

A. I should say about two (2) miles.

Q. 47. Did you hear any conversation after the collision between the captains of the vessel, or have you heard the captain of the Osborn

make any statements in regard to the collision; if so, you may state what he said.

A. I heard Captain Parson speak to Captain Seamons and ask him if our lights were not nice lights, and he said they were splendid lights, I heard Capt. Seamons say it was too bad about the collision, because he had his boy with him as mate. He said he had a good mate two trips ago, but he could not find any one he could trust, so he took his boy; Captain Parsons told him to take his sails in; he wanted to know how to do that; Capt. told him to cut the halyards and let them come down. I heard Capt. Seamons say he was steering for Beaver Island light.

Further cross-examination.

Q. 48. When did you first become mate, or second mate?

A. I don't remember now exactly what year it was in, about
45 fifteen years ago, I think.

Q. 49. In what capacity have you sailed since then?

A. I have been mate, 2nd mate, and master. I have held one or the other of the positions since then. Have not sailed before the mast. Have sailed most of every season.

Q. 50. Did you see a vessel or propeller at the docks at Fox Island the morning after the collision, and did you see the light on Fox Island after the collision?

A. I saw the propeller in the morning at Fox Island. I don't remember now of seeing the light. I saw the island as soon as it was daylight

Q. 51. How near did the vessels go as they drifted to the dock where the propeller lay, and how far did they drift after they passed the dock?

A. I think we were off seven or eight miles, as near as I can tell from the island, and I should not think we drifted much past the dock. I did not pay much attention to it.

C. O. INGRAHAM.

United States district court, northern district of Ohio. In admiralty.

WILLIAM G. WINSLOW ET AL., *vs.* SCHOONER S. S. OSBORN. } Depositions taken by consent.

H. L. Terrell appearing for libellants.
Loren Prentiss " " defendant.

46 Also EDWARD INGRAHAM being duly examined, cautioned, and sworn to speak the truth, the whole truth, and nothing but the truth, deposes and says:

Q. 1. State your name, age, occupation, and place of residence?

A. My name is Edward Ingraham; 24 years old; sailor by occupation; reside in Painesville, Ohio.

Q. 2. How long and in what capacity have you served as sailor?

A. Have been sailing about eleven or twelve years. Been before the mast and second mate.

Q. 3. What vessel did you last sail on?

A. The American Union.

Q. 4. State whether you were on her atthe time of the collision with the Osborn?

A. Yes, sir.

Q. 5. In what capacity?

A. Second mate at the time of the collision.

Q. 6. State on what voyage she was bound at the time of the collision, and the circumstances of the collision as far as you know?

A. She was bound to Escanaba. We anchored at Sand Bay between 12 and 1 the night before the collision, I don't remember what time we got under way, 'twas in the evening some time. I came on deck about 12 o'clock. At the time I came on deck at 12 o'clock I can't state where the vessel was. I did not look at Beaver Island light. The vessel was at that time sailing by the wind, her sheets flat aft; we had star-
47 board tacks aboard; when I came on deck the captain and mate were both on deck, I had nothing to do with the canvas. From that time on till the collision she was sailing by the wind, her sheets flat aft. I don't know how the vessel was heading, I did not look at the compass. When they are both on deck I don't go aft much. I think she was heading about west. Her lights were placed a little forward of the mizzen rigging, both of them burning. I heard no conversation between the two captains after the collision. I saw the Osborn before she struck us. Saw her green light. The mate called my attention to the green light. Then he turned around and called up the captain.

Q. 7. State who, if any person called your attention to the light of the Osborn, and what was said in relation thereto.

(Objected to by defendants as far as relates to conversation.)

A. The mate called my attention. He said to me, "Watch that light and soon you will see a red light." He turned round then and called the captain. When I first saw the light she was coming right into us, right for our fore rigging. She was almost ahead a little on the port side.

Cross-examination:

Q. 8. How long have you been second mate?

A. I was about three months last fall, and about two months this season.

Q. 9. What time did you go below the night of the collision, and what time did you come up?

48 A. I went below, i might have been nine or half past. I remained below till twelve.

Q. 10. What called you on deck at twelve?

A. It was eight bells, sir, and my watch on deck at 12 o'clock.

Q. 11. How long had you been on deck before the mate called your attention to the green light of the Osborn?

A. It might have been five minutes, or little more, ten minutes probably.

Q. 12. How soon after your attention was called to the light did the mate call the captain up?

A. Well, just as soon as he could step to the door, 'twasn't a minute probably.

Q. 13. Did you pay any particular attention to the sails when you came on deck?

A. No, sir; I only noticed they were flat aft by the wind. The captain and mate were both on deck then.

Q. 14. Where did you and the mate stand at the time he called your attention to the green light?

A. On the port side forward of the cabin, probably four or six feet from the cabin.

Q. 15. Did the mate go forward toward the lookout after calling your attention to the light before he called the captain?

A. No, sir; he turned right around and called the captain.

Q. 16. How long after the captain came on deck before the collision occurred?

A. Well, sir, only a very few minutes. The captain took a look at the light and told the mate to run forward and tell them to keep away.

49 Q. 17. Were any orders given to the man at the wheel after you came on deck?

A. Not as I know of, I was not at the wheel.

Q. 18. Were the vessels fastened together alongside stern and aft, immediately after the collision?

A. Yes, sir; they were fastened.

Q. 19. Did they drift before the wind in that condition during the night, till seven or eight o'clock next morning?

A. Yes, sir; they drifted and were going ahead at the same time.

Q. 20. Did you remain on deck during the rest of the night, and if so, what were your duties, and what did you do?

A. Yes, sir; I was on deck the rest of the night working around about decks.

Q. 21. Who had charge of the vessel during the night, on the part of the officers, after the collision?

A. The captain.

Q. 22. What orders, if any, was given to the man at the wheel during the night after the collision, if any man was kept at the wheel?

A. I don't know what orders, and don't know whether any one was kept at the wheel.

Q. 23. What sails were taken in, and what sails were left standing, during the night after the collision?

A. They were all kept standing except the mizzen.

Q. 24. What was the bearing of the wind on your vessel during the night after the collision?

A. I forget what the wind was.

Q. 25. You say you made headway during the night, with respect to what vessel do you say this, and in what direction did you make headway?

50 A. The American Union made headway. I can't say in what direction, did not look at the compass.

Q. 26. Did you see a propeller lying at the southerly end of South Fox Island, and how far were you from it in the morning?

A. I saw a propeller lying there at the dock, I can't say as to the distance, I did not notice the spars of the propeller.

Q. 27. Did the vessels remain fastened together as above stated, till after you passed by the propeller?

A. They lay together, sir, till along about seven o'clock in the morning. I can't tell whether she was alongside or not, I think we had her in tow when we saw the propeller.

Q. 28. Did the vessels pass by the propeller?

A. No, sir.

Q. 29. What was the bearing of the propeller to the vessels at the time the vessels were unfastened from alongside, and you took the Osborn in tow?

A. I don't know what the bearing was, I did not look at the compass.

EDWARD INGRAHAM.

United States district court, northern district of Ohio. In admiralty.

WILLIAM G. WINSLOW ET AL.
vs.
SCHOONER S. S. OSBORN.
} Depositions taken by consent.

H. L. Terrell appearing for libellants.
51 Loren Prentiss appearing for defendants.

E. S. OUTIS being duly examined, cautioned and sworn to speak the truth, the whole truth and nothing but the truth, deposes and says:

Q. 1. State your name, age, occupation, and place of residence.

A. E. S. Outis is my name; age, 54; occupation, farmer and sailor; live in Mentor.

Q. 2. How long have you sailed, and in what capacity?

A. Have sailed before the mast for seven years, 25 years ago I sailed on these lakes, I have sailed more or less for eleven years.

Q. 3. State on what vessel you have been sailing this season during the month of August, 1872.

A. American Union, I was aboard of her at the time of the collision with the Osborn.

Q. 4. State what voyage the American Union was then on, and all you know about the collision?

A. She was bound to Escanaba, I had the fore part of the evening watch, between the hours of 8 and 12, I then went below by order of the mate relieved from the lookout. I was on the lookout mostly four hours, we came at anchor one o'clock in the day, remained there till about half-past nine. When got under way we rounded the south point of Beaver Island between the hours of 10 and 11. I don't know the course, I was not at the wheel. We were abreast of the Beaver Island light about ten o'clock. Thomas Gilkison took the wheel at about that hour. After we had rounded the point the mate called us aft to brace her up, that is to bring her closer in the wind; from that time when I was
52 called to the mizzen sheet, I took a look at the fly and compass, and she was then heading not far from west, that would make the wind not far from northwest by north. Her sails were trimmed from that time on to the collision, close hauled and sharp up. We had starboard tacks aboard, the sails remained in that position from that time until I left the deck at twelve o'clock. There had been no change in the wind—direction—but it had freshened a little.

Q. 5. Were you on deck at the time of the collision?

A. I was. I got on the deck time enough to turn my attention to the lee bow port side when she took away the port anchor.

Q. 6. How were your sails trimmed at the time of the collision?

A. Close hauled, the same as when I went below.

Q. 7. Can you tell how the Osborn was headed when she struck?

A. No, I cannot; I heard Captain Seamons say to our capt. that he hadn't been below but about 15 minutes, that he gave orders to keep her headed to Beaver Island light.

Q. 8. About how far were you from Beaver Island light when you collided?

A. I should judge about four or five miles, the light was a little abaft the beam. Can't give the directions.

Q. 9. How were your lights?

A. They were burning, and just forward of the mizzen rigging, just forward of the forward shroud of the mizzen rigging.

Q. 10. What other conversation did you hear between the captains?

A. I heard Captain Parsons tell Captain Seamons to try his
53 pumps, "Are you sinking?" I then turned to our own pump, took the sounding line and sounded, after that there was a call for a sounding line to sound the pumps of the Osborn. Captain Seamons or his men said he had none. In sounding I believe they found 13 inches of water.

Cross-examination:

Q. 11. How long had you been below when the collision occurred? Did you come on deck before the collision?

A. Had been below about 15 or 20 minutes. I came on deck before the collision. Came on deck just as the collision occurred.

Q. 12. Were you called off from the watch between 8 and 12? If so, for what?

A. I was called off once to have the sheets flat aft; was not called off again, was off this time not to exceed ten minutes. That was about an hour before I went below.

Q. 13. Did you remain up the rest of the night after the collision, and did the vessels drift together before the wind after they collided?

A. I remained up the rest of the night. The vessels drifted together. When we collided a line was passed to and fro from the vessels, and remained so until about eight o'clock. While we were in that situation, and we had our sails still set towing her stern foremost, we were making Fox Island.

Q. 14. How far past Fox Island did the vessels drift in the situation you have mentioned?

A. I can't say that they went past Fox Island. I can't tell how far they did go in that situation.

54 Q. 15. Did you see a propeller lying at Fox Island dock, and did you see Fox Island light while the vessels were thus drifting?

A. I saw a propeller lying side of an island at break of day. I saw the light also.

Q. 16. What direction were you from the propeller at the dock at the time the vessels were separated from each other, and the Osborn taken in tow by the American Union?

A. They were not separated when she was there if my memory serves me right.

Q. 17. Give the positions of the vessels to each other as they drifted, immediately after the collision.

A. What I should call head and stern alongside, fastened head and stern.

Q. 18. What was the position of the vessels as they drifted?

A. I should judge that we drifted sid'wise. The Osborn on her port side; we were making Fox Island, going ahead a little of course; we making Fox Island about daylight when we could see more clearly.

Q. 19. How near did you come to Fox Island, and what part of the island, early in the morning?

A. Some judge it was 4 miles and some 8 miles. I could not say how far it was.

Q. 20. Did the vessels remain fastened together and drifting till about eight or nine o'clock in the morning?

A. I think they did until about that time, when we gave them a large haven, and they fell astern, we towing them; we towed them till about 3 o'clock the next day.

Q. 21. How far from the propeller at the dock were the vessels at the time the change was made from a side to a tow?

55 A. I should judge 'twas ten or twelve miles; we could just see her hull clearly.

Q. 22. How near were you to the propeller at the dock when the vessels were the nearest to the propeller?

A. From 8 to 10 miles. I am a stranger to that part of the lakes and can't tell much about it.

Q. 23. Do you know whether the island where the propeller was was North or South Fox?

A. I can't tell. I could not see the spars of the propeller.

Redirect:

Q. 24. From the time of the collision till morning which way was the sea rolling?

A. The waves rolled from the northwest.

Cross-examination:

Q. 25. Did the vessels drift in the direction the sea was rolling?

A. Of course they always drift.

Redirect:

Q. 26. Did the vessels make headway from the collision till morning?

A. Yes, sir.

Q. 27. Your canvas was still up?

A. Yes, sir.

E. S. OUTIS.

United States district court, northern district of Ohio. In admiralty.

WILLIAM G. WINSLOW ET AL. *vs.* SCHOONER S. S. OSBORN. } Depositions taken by consent.

56 H. L. Terrell appearing for libellants.
Loren Prentiss " " defendants.

ALBERT OUTIS being duly cautioned examined and sworn to speak the truth, the whole truth and nothing but the truth, deposes and says:

Q. 1. State your name, age, occupation, and place of residence.

A. My name is Albert Outis; 20 years old; sailor by occupation; live in Mentor.

Q. 2. How long have you been sailing?

A. Five years off and on.

Q. 3. What vessel did you last sail on?

A. The American Union.

Q. 4. Were you on board the American Union at the time of the collision with the Osborn?

A. Yes, sir.

Q. 4. What voyage was she on at that time?

A. Bound to Escanaba.

Q. 5. What time did you come to an anchor at Sand Bay?

A. It was the night before the collision at 12 or 1 o'clock. We laid there all day till the next night, and got under way again at about 9 o'clock. I remained on deck till 12 o'clock. I don't know what time we rounded the southern point of the island, after we rounded the point and laid our course. I don't remember what it was at the time we rounded the point. I think it was a beam wind at 12 o'clock.

57 When I went below our canvas was trimmed by the wind. It was somewhere 11 o'clock when we hauled them aft. We had starboard tacks aboard. Our sheets were flat aft all the time from 11 to 12 o'clock.

Q. 6. From ten to 12 that night were you either at the wheel or lookout, or were you a spare man?

A. I was a spare man. I was on deck at the time of the collision.

Q. 7. How were your sails trimmed when you came on deck just before the collision occurred?

A. By the wind, sir.

Q. 8. Where was the Osborn when you first saw her?

A. She was about 3 rods off our port bow ahead.

Q. 9. How many points off?

A. I could not say; was not steering the vessel.

Q. 10. Where were you standing on deck at that time?

A. Between the forecastle and foremast.

Cross-examination:

Q. 11. Were you on deck all the while from 8 to 12, and did you go below at 12?

A. Yes, sir.

Q. 12. What called you on deck after you went below, and how soon?

A. I heard the mate call, "Schooner keep away!" I came on deck then. That was from 15 to 20 minutes after I went below.

Q. 13. Where was your vessel at the time you went below with reference to the Beaver Island light?

A. Between 3 or 4 miles toward Escanaba.

Q. 14. How long was it before you went below that you rounded the point of Beaver Island?

58 A. I don't remember; don't think I can tell.

Q. 15. You say that the wind was abeam at the time you rounded Beaver Island. How long did the wind continue abeam?

A. Till about half past eleven or eleven o'clock; might have been before or after. I don't think 'twas any later than half past eleven.

Q. 16. What was the course of the vessel at the time you rounded the island?

A. Don't know; wasn't at the wheel.

Q. 17. Was the course of the vessel changed at or after you rounded the end of Beaver Island, and, if so, what change was made in her course?

A. I don't know. I wasn't at the wheel and did not notice it.

Q. 18. At what time did the wind commence to be abeam, as you said?

A. I can't tell.

Q. 19. Did it (the wind) continue abeam as long as half an hour at least?

A. I don't know.

Q. 20. Were the vessels fastened together, and did the drift before the wind the remainder of the night?

A. Yes, sir; they drifted some.

Q. 21. To what point had they drifted by seven or eight o'clock next morning?

A. I don't know what point it was.

Q. 22. Could you see the southerly end of South Fox in the morning?

A. I could see Fox Island; don't know which Fox it was.

59 Q. 23. Did you see a propeller lying at the dock at Fox Island in the morning before the vessels were unfastened from each other?

A. Yes, sir.

Q. 24. How far were the vessels from this dock at the time they were separated in the morning?

A. Couldn't answer that question; don't know, sir.

Q. 25. How near did the vessels go to this propeller at the dock when they were drifting?

A. Well, it might have been 3, 4, or 5 miles; can't say.

Q. 26. Did you look to see whether you could see the spars of the propeller?

A. No, sir; I did not pay any attention to it.

ALBERT S. OUTIS.

United States district court, northern district of Ohio. In admiralty.

WILLIAM G. WINSLOW ET AL. *vs.* SCHOONER S. S. OSBORN. } Depositions taken by consent.

H. L. Terrell appearing for libellants.
Loren Prentiss " " defendant.

GEORGE MAGLEY being duly examined, cautioned, and sworn to speak the truth, the whole truth, and nothing but the truth, deposes and says:

Q. 1. State your name, residence, occupation, and age.

A. My name is George Magley; reside in Painesville, O.; am sailor by occupation, and 25 years old; have been a sailor for two seasons before the mast.

60 Q. 2. What vessel were you on last month?

A. The American Union. I was on her at the time of the collision with the S. S. Osborn.

Q. 3. State where the American Union was bound, and the circumstances of the collision as far as you know them.

A. She was bound for Escanaba; she was light. The day before the collision the American Union lay at anchor at Sand Bay. We got under way about one o'clock in the morning; that's the time we let go; we got under way about 9 o'clock the next night; we were bound for Escanaba. I came on deck at 12 o'clock at night. I took the wheel then; we were then abreast of the Beaver Island light. I was ordered to steer full and by. I steered her full and by. The wind was about northwest by north. There was no change in the wind from that time on up to the collision. There was no change in our course; we were heading due west; we had starboard tacks aboard. Our lights were burning and were forward of the mizzin rigging. Did not see the lights of the Osborn myself. There was a nice little breeze. We were sailing about 7 miles an hour. Our sails were flat aft. I heard no conversation between the captains after the collision. When I came on the deck at 12 o'clock the vessel was heading west; her course was full and by.

Q. 4. How far could the canvas of a vessel have been seen that night at the time of the collision?

61 A. About a mile and a half or two miles, I should think; may be farther.

Q. 5. About how was the Osborn heading when it struck you?

A. I couldn't tell; she struck us on our port bow.

Cross-examination:

Q. 6. How near did you go to Beaver Island in passing the island?

A. Went about seven or eight miles. I don't know whether we could have gone closer to the island or not.

Q. 7. Did the vessels drift before the wind after the collision?

A. Yes, sir.

Q. 8. What time was it when they separated?

A. It was about seven o'clock in the morning when they got apart.

Q. 9. Did you see any vessels or boats near you in the morning?

A. Yes, sir. I see one off near Fox Island.

Q. 10. How far were the vessels at that time from the boat that you saw?

A. We were ten miles I should think from that one. It was a sail vessel sailing along.

Q. 11. Did you see a propeller at the docks at Fox Island as you passed?

A. Yes, sir; I did.

Q. 12. How near did you pass to the propeller?

A. About eight miles, I should think; somewhere about that.

Q. 13. How far did the vessels drift together beyond the point where you were at the time that you saw the propeller at Fox Island?

62 A. I should say about ten miles. I don't know how far.

Q. 14. Did you see the Fox Island light in the morning?

A. I don't remember of seeing it, sir. I don't know where this light is.

Q. 15. How near did you go to the dock at Fox Island when you passed the island?

A. Well, I couldn't tell how near, I am sure. It might have been eight miles or farther. I could see the propeller at the dock, but could not see the dock. I didn't see her spars.

Q. 16. At the time the vessels separated after passing Fox Island, in what direction from you was Fox Island?

A. I couldn't tell you exactly in what direction the island was. I could see Fox Island, but can't tell in what direction it was.

Q. 17. Was the captain below when you went on deck at 12 o'clock?

A. I don't know whether he was or not.

Q. 18. How soon after you went on deck did you see him?

A. I didn't see him till the collision was.

Q. 19. What time did you go below that night, and were you on deck after you went below till 12 o'clock?

A. I went below at 8 o'clock I was not on deck again before 12 o'clock. I believe on reflection it must have been about 10 o'clock when I went below. I assisted in getting the vessel under way before I went below.

GEORGE MAGLEY.

63 The United States district court, northern district of Ohio. In admiralty.

WILLIAM G. WINSLOW ET AL. *vs.* SCHOONER S. S. OSBORN. } Depositions taken by consent.

H. L. Terrell appearing on behalf of libellants.
Loren Prentiss " " " " defendants.

FRANK WICKS being duly cautioned, examined and sworn to speak the truth, the whole truth, and nothing but the truth, deposes and says:

Q. 1. State your name, age, occupation and place of residence.

A. Frank Wicks; 22 years; sailor by occupation; reside in Mentor; have been a sailor for four years before the mast. Last sailed on the American Union. I was aboard the American Union at the time of the collision with the S. S. Osborn.

Q. 2. What voyage was the American Union on at the time of the collision?

A. She was bound for Escanaba.

Q. 3. State what you know in regard to the collision?

A. We anchored Thursday night off Sand Bay, at one o'clock. We weighed anchor about nine o'clock Friday night. I assisted in this and went below till 12 o'clock; went below about 10 o'clock, came on deck again at 12 o'clock. The vessel was then off Beaver Island light, four or five miles off. I had no particular post assigned me. Our sails were trimmed flat aft by the wind. We had starboard tacks aboard. The
64 wind was at that time I should think from the way she was heading about northwest by north. I did not look at the compass. Didn't know, but should think she was headed about west. From that time on till the time of the collision there was no change in the wind or course of the vessel. I saw the Osborn about five minutes before she struck. I heard the lookout say before that that he saw the light. She was right off our lee bow a couple of points. I should think when I first saw her she was then showing a green light. I can't tell what direction she was going when she struck us I couldn't tell the course, but from the way we were heading I should think she was heading about northeast. She tore our flying jib; did not injure our fore sail or main sail. Our lights were at the time of the collision and a half hour previous thereto situated a little forward of the mizzen rigging. They were both burning. The collision occurred about four or five miles from the Beaver Island light. I could not say in what direction the Beaver Island light was at the time of the collision.

Cross-examination:

Q. 4. How near was your vessel to the Beaver Island light when you came on deck?

A. In the neighborhood of four miles.

Q. 5. How soon after you came on deck did the collision occur?

A. I should say somewhere about 15 minutes; can't say exactly.

65 Q. 6. What part of the vessel were you on when you came up, till the time of the collision?

A. I stood most of the time by the gallant forecastle, forward.

Q. 7. Who was on the lookout?

A. Robert Mott.

Q. 8. How near were you to him?

A. I was within ten or fifteen feet of him.

Q. 9. Did you see the light of the Osborn before the lookout called out?

A. No, sir.

Q. 10. Which side of the vessel were the sails on when you went below?

A. They were on the port side, starboard tacks aboard.

Q. 11. Was she going before or by the wind when you went below?

A. She didn't have her sheets flat aft nor off very far; the wind was a little free.

Q. 12. Have you any means of knowing the course of either vessel at or just before the collision?

A. I don't know, only from what I heard them say; I did not look at the compass, and couldn't tell exactly.

Q. 13. Were the vessels fastened together fore and aft immediately after the collision?

A. I think the first line got aboard the Osborn was about midships; they were afterwards fastened together.

Q. 14. Did the vessels thus fastened together drift before the wind till seven or eight o'clock next morning?

A. Yes, sir; somewhere near that time.

Q. 15. To what point did they drift before they were unfastened and their positions changed?

66 A. Well, I don't remember now whereabouts it was; I didn't pay much attention to that.

Q. 16. Did you see a propeller lying at a dock at the southerly end of Fox Island that morning?

A. I saw a propeller at the dock; can't say where it was; am not much acquainted there.

Q. 17. Which way, and how far from the propeller at the dock were you at the time you saw it?

A. Well, we could just see her right astern of us; I didn't see a propeller until after we took the Osborn in tow.

Q. 18. Was there any one at the wheel of the Union after the collision, and during the night?

A. Well, I think there wasn't, part of the time at least; there was some one there part of the time, and part of the time no one, while they were hitched together.

Q. 19. Did you hear any orders given during the time they were fastened together and drifting, to the man at the wheel?

A. No, sir; orders might have been given and I not hear them.

Redirect:

Q. 20. Was your canvas kept standing from the time of the collision on till morning?

A. Yes, sir; we hauled down one flying jib, it was torn; I think also the fore gaff topsail,

Q. 21. State whether you heard any conversation between the captains of the two vessels?

A. I saw Captain Parsons go aboard the Osborn, and show
67 Captain Seamons our light. Captain Parsons asked him if he could see our lights, and he said he could; then he went aft on the quarter of the Osborn, and told him he could see them standing right there; the quarter of the Osborn then with respect to our vessel, was a little forward of the fore rigging; they were then hitched together.

FRANK WICKS.

Q. 1. State your name, age, occupation, and place of residence.

A. My name is Thomas G. Gilkison; 28 years old; am sailor by occupation; Hamilton, Ont.

Q. 2. How long have you been sailing, and in what capacity?

A. Have sailed 22 years, and in all capacities except captain.

Q. 3. Were you on board the American Union at the time of the collision with the Osborn?

A. Yes, sir.

Q. 4. State when you were at the wheel.

A. I was at the wheel from 10 to 12 that night, Friday the ninth.

Q. 5. State what time you rounded the point of Beaver Island?

A. I can't say exactly what time we rounded the south point of Beaver Island; we hauled our sheets between eleven and twelve; should think about half-past 11, or fifteen minutes of 12.

68 Q. 6. From the time her sheets were hauled flat aft, as stated, till the time you left the wheel, how was the vessel sailing?

A. The vessel was heading west; I had no course, sir; her course was full and by; that I got from Captain Parsons.

Q. 7. How was the wind during the same time?

A. The wind was about northwest by north; the wind was steady; it was steady for the fifteen minutes before I left the wheel, for I kept her due west; if there had been no sea on I could have lain a little higher than that; take that vessel with no sea on she would lay half a point higher, and make considerable headway; that's within four and a half points of the wind.

Q. 8. Which way was the sea making when you left the wheel?

A. The sea was making from the northwest.

Q. 9. Were you on deck at the time of the collision?

A. I was, sir.

Q. 10. Did you see the Osborn before she struck?

A. I saw her before she struck.

Q. 11. Well, how did she bear when you first saw her?

A. When I first saw her she was bearing fair and square on our port bow; when I went below at 12, I heard the mates sing out "Schooner ahoy, keep off," and that's what brought me on deck; just as I was about on deck, the mate cried out, "look out for a collision below there."

Q. 12. You may state where your lights were placed that night, and whether they were burning or not.

69 A. They were placed just forward of the mizzen rigging; they were burning.

Q. 13. State what, if anything, there was to obstruct the view or hide them from a vessel approaching, as the Osborn was?

A. Nothing whatever.

Q. 14. How were your sheets when you came on deck just before the collision?

A. They were flat aft, sir. They were hauled aft between eleven and twelve o'clock, and they were kept that way.

Q. 15. State whether you heard Captain Seamons say anything after the collision.

A. After we found out we were not sinking, Captain Parsons went aboard the Osborn and called his attention to our red light, and Captain Parsons asked him if he could see that red light, and if it wasn't burning prettily. Captain Seamons said he could see it, and it was burning all right.

Q. 16. How far were you from Beaver Island light when the collision occurred?

A. About five or six miles, I should think. I saw Beaver Island light before I went below.

Q. 17. How long after the collision did you first notice Beaver Island light?

A. About half an hour; it could be seen all the time if one looked for it.

Q. 18. Well, how did it bear before you went below?

A. I could not say, sir; I did not take the bearing of it.

Q. 19. How was the wind, and how was the sea making after the collision?

A. The sea was making from the northward and westward, and
70 the wind was northwest by north. When the Osborn was alongside she kept falling off, and got into the trough of the sea, and there she lay, with the wheel lashed head aport.

Cross-examination:

Q. 20. Which side of your vessel were the sails on when you left Sand Bay?

A. They were on the port side, sir.

Q. 21. How long did they continue in that position?

A. Till between eleven and twelve o'clock.

Q. 22. Were you sailing by or before the wind when you left Sand Bay?

A. We were running free, sir. *Q.* 23. We run that way till the sheets were hauled aft. The sheets were checked in a little before I went to the wheel, and were hauled flat aft while I was at the wheel.

Q. 24. How free did you have the wind when you were coming down from Sand Bay?

A. Between 2 and 3 points; somewhere about there.

Q. 25. And up to what point did it continue in that position?

A. Till we hauled our sheets aft, between 11 and 12.

Q. 26. Were the sheets hauled flat before you changed your course to due west?

A. Our course was full and by, the vessel heading west. I was steering full and by. After the sheets were aft and she was heading west, I was not steering by the compass.

THOMAS G. GILKISON.

71 Also ALEX. STEWART, who being duly cautioned, examined, and sworn, deposes as follows:

Q. 1. State your name, age, occupation, and place of residence.

A. My name is Alex. Stewart; 32 years old; sailor by occupation; reside in Buffalo.

Q. 2. State how long you have been a sailor, and in what capacity you have sailed?

A. Have sailed about fourteen years; seaman m[illegible] and sailing yacht for the last five or six years.

Q. 3. State on what vessel you are now sailing, and in what capacity?

A. Have been sailing on the barque Nelson as mate.

Q. 4. State, if you remember, the night of the collision between the American Union and the S. S. Osborn.

A. I can't tell what night it was. Yes, sir; I remember the night of the collision. I don't remember the day of the week nor the day of the month. I was on the Nelson the night of the collision between the Osborn and the American Union.

Q. 5. State on what voyage the Nelson was that night, and where she was from eight o'clock in the evening till 2 in the morning.

A. She was from Escanaba to Cleveland, with ore, and from 8 to 12 that night was in the passage from Rocky Island passage to the Beavers.

Q. 6. State what time the Osborn left Escanaba that day, and what time the Nelson.

A. The Osborn left some time in the forenoon and the Nelson left a little after noon; can't say exactly what time.

Q. 7. Where did you last see the Osborn that night before darkness came on?

72 A. I should think about seven or eight miles to windward and ahead of us before dark. This was before we came out of the passage.

Q. 8. State how long you were in running from Rocky Island passage to Beaver Island that night?

A. Between six and seven hours.

Q. 9. State, if you know, the distance.

A. No; not exactly.

Q. 10. In running from Rocky Island passage to Beaver Island that night, state how you had the wind, free or otherwise?

A. I don't know how the wind was from eight to half past eleven. At half past eleven o'clock I know the wind was free.

Q. 11. When did your watch on deck begin?

A. At 12 o'clock; I came on deck at half past 11.

Q. 12. You may state, from the time you came on deck at half past eleven till the time you reached Beaver Island, how you had the wind, whether free or otherwise?

A. The wind must have been free, for when we saw South Fox light we thought we were to leeward of our course, and hauled her up on the wind, and she came up northeast.

Q. 13. How close to the wind can the Nelson sail?

A. About six points.

Q. 14. When you hauled her upon the wind, how far up did you haul her, and how were her sails trimmed?

A. We let her come up to the wind till she came up northeast, and we thought that was a little too high, so we kept her off east northeast.

73 Q. 15. When you hauled her up northeast how were her sheets?

A. The sheets were about 3 points off; the wind slacked off apiece. No; before we started to bring he' up to the wind her sheets were about 3 points off the wind. But when we brought her northeast we let the braces go forward, and the mainsail shook them, and when we kept her away east, northeast, we flattened the mainsheet aft a little, and left the braces stand as they were.

Q. 16. State whether at any time you hauled her sheets flat aft?

(Objected to by defendant.)

A. Yes, sir; we hauled them flat aft at about two o'clock, when we hauled around the head of the Beaver.

Q. 17. State whether or not, at the time you have spoken of when you let her come up northeast, the sheets were hauled flat aft?

(Objected to by defendant.)

A. No.

Q. 18. From 12 till 2 that night what was the direction of the wind?

A. I couldn't tell exactly to the point. But when we hauled her by the wind, at about two o'clock, the wind must have been north, northwest.

Q. 19. State whether, knowing your course from twelve till two, and the manner in which you had your canvas trimmed, and that you had the wind free, you were able to tell about where the wind was during that time; and, if so, where was it?

(Objected to by defendants.)

A. Well, the wind must have been a little beaft the beam from the way we were steering.

74 Q. 20. How were you steering from half past eleven to one o'clock?

A. About east, northeast.

Q. 21. From half past eleven till one o'clock how did you have the wind, free or otherwise?

(Objected to by defendant.)

A. The wind was a little free.

Q. 22. From half past eleven till one o'clock did you have the wind forward of the beam, abeam or abaft the beam?

(Objected to by defendant.)

A. Well, the wind must have been—couldn't exactly—a little beaft the beam. We didn't watch the wind to a point; as long as the wind was good and free we didn't pay much attention to it—where it was exactly.

Q. 23. What sort of a night was that?

(Objected to by defendants.)

A. It was kind of a dirty, dark night—not very. The first part of the night was dirty and dark, but after twelve o'clock it cleared up.

Q. 24. At any time after twelve o'clock that night how far could the canvas of a vessel have been seen if full spread?

(Objected to by defendant.)

A. I don't know exactly; about a mile or so.

Cross-examination:

Q. 25. Where was your vessel at the time you went below at 8 o'clock?

A. We had just got through Rocky Island passage.

75 Q. 26. What course was your vessel then steering?

A. The captain shaped his course at 8 bells east, a half north, to the best of my knowledge; that is the course he gave them. I did look at the compass. I don't call that examining. I know from my own knowledge that that was the course of the vessel at that time.

Q. 27. What was the shape of your sails at that time?

A. Hauled flat aft then.

Q. 28. Do you know anything about the course of the wind or of the vessel from that time till half past eleven?

A. No, sir.

Q. 29. When you came on deck did you look to see what time it was?

A. Yes, sir; I looked at the clock; it was half past eleven.

Q. 30. How soon after you came on deck did you notice the course of the vessel?

A. That was the first thing I looked at when I came on deck to see how she was going.

Q. 31. What was the course of the vessel when you came on deck at half past eleven?

A. I believe she was heading about east by north then.

Q. 32. What was the position of her sails then?

A. Her sheets were eased off then.

Q. 33. How long did she continue on that course?

A. We hauled her up on the wind a little after that. I can't tell exactly to minutes how soon; in about a quarter of an hour or so we hauled her up all she would come. She came up to northeast.

Q. 34. How long did she continue on the course of northeast?

76 A. We didn't keep her any time at all hardly; we put her then east, northeast.

Q. 35. What condition were her sails in when she came up northeast?

A. Her braces were let right forward then; that's what we call by the wind, and the mainsail shook. Her mainsails shook because they were not flat aft. She continued east, northeast, till about one o'clock as near as I can remember.

Q. 36. What time did you pass Beaver Island light, and how far from it?

A. We passed it about two o'clock, and about from a mile and a half to two miles off. I forget now whether the man at the wheel was relieved at 4 bells. I think he was and helped me brace her up.

Q. 37. What day of the month was this?

A. I don't know, sir.

Q. 38. Did your vessel take the direct passage to Beaver Island light?

A. She did, to the best of my knowledge.

Q. 39. What time did the night clear up?

A. About midnight it commenced to clear up. I can't tell exactly what time. It was getting cleared up when we were off Beaver Island light.

Q. 40. Immediately after you passed Beaver Island light, what was the course of your vessel, and to what place?

A. After we passed the light she was making a northeast course, and a little before four o'clock she broke off northeast, a half east, Skillikeln Island; then bore about a point off the weather bow.

77 Q. 41. What was the condition of your sails from the time you passed Beaver Island light till you bore off Skillikeln Island.

A. The sails were flat aft till four o'clock; I don't know how they were after that; we sailed by the wind from the time we left Beaver Island light.

Q. 42. Did the wind change any after you came on deck at half past eleven till four o'clock?

A. Well, it might have veered around a little; there wasn't much difference, though.

Q. 43. Did you not have a conversation with Captain Seamons on the dock in the city of Cleveland immediately after the vessels arrived at Cleveland, and did you not in that conversation tell him that your vessel was close hauled all the way the night of the collision of the Osborn and American Union?

A. I had a conversation with him; but I don't know as I told him that; I didn't want to be roped into this thing at all, and might have said things that I didn't mean; I believe I had another conversation with him, and told him it wouldn't do him any good to have me hauled up.

Q. 44. Are you acquainted with Captain Parsons of the American Union, and have you not had repeated conversations with him in reference to the collision, before coming here to testify?

A. I don't know as I ever saw the man before yesterday in my life, and he never spoke to me before yesterday about the collision, on anything else; he asked me yesterday if I wouldn't come up and

78 give a kind of a statement how I was running that night. Captain Seamons told me before, the last time that I was here, that I might have to come up and give a statement how I was running that night; I did not have any kind of a conversation with Captain Parsons about how I was running.

ALEX. STEWART.

ALBERT LANDRETH being duly examined, cautioned, and sworn to

speak the truth, the whole truth, and nothing but the truth, deposes and says:

Q. 1. State your name, age, occupation, and place of residence.

A. My name is Albert Landreth; I am 28 years old; I am cook on the lakes; reside in Cleveland.

Q. 2. How long have you been cooking on the lakes?

A. Thirteen years.

Q. 3. What vessel was you last cooking on?

A. The American Union.

Q. 4. Were you on the American Union at the time of the collision with the S. S. Osborn?

A. I was.

Q. 5. State whether you were on deck at the time of the collision?

A. I was on deck about five minutes before the collision; I wasn't on deck over five minutes; I had gone below and just got into bed when I heard the vessels strike.

Q. 6. What were you doing on deck?

79 A. I went on deck to take a look around.

Q. 7. When you were on deck how was the vessel sailing?

A. The vessel was heading due west.

Q. 8. State how the canvas was trimmed?

A. They were trimmed close aft, with starboard tacks aboard.

Q. 9. Where was the wind?

A. The wind was northwest by north.

Q. 10. When were you on deck last, before the time you speak of?

A. About 8 or 9 o'clock.

Q. 11. You may state how you know your course was due west.

A. I looked in the compas', and also looked up to see how the fly was tailing.

Cross-examination:

Q. 12. How far were you from the Beaver Island light at the time you came on deck referred to?

A. I should say somewhere between five and ten miles; I did not notice the light till after the collision.

Q. 13. Were you west of North Fox Island?

A. Yes, sir; we were; couldn't say how far west; I didn't notice it.

Redirect:

Q. 14. How did Beaver Island light bear from you after the collision?

A. I did not notice it.

ALBERT LANDRETH.

UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

I, Clifton B. Beach, a notary public duly appointed as hereinbefore stated, do hereby certify that the reasonfor taking the foregoing
80 deposition is, and the fact is, that the testimony of Charles O. Ingraham, Edward Ingraham, E. S. Outis, Albert Outis, George Magley, Frank Wicks, Thomas G. Gilkison, Alexander Stewart, and Albert Landreth, is material and necessary in the cause, the title whereof is in the caption of said deposition' named, and pending in the district court of the United States for the northern district of Ohio, and that the said witnesses are, all of them, seafaring men, and about to depart on a voyage to sea. I further certify that depositions were taken by consent. I further certify, that on the 26th day of August, in the year of our

Lord one thousand eight hundred and seventy-two, I was attended by Loren Prentiss, proctor for said defendant, and by the witnesses aforesaid, who being of sound mind and of lawful age, and the witnesses being by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and their depositions being by me reduced to writing in the presence of the witnesses aforesaid, and from their own statements, and after carefully reading the same to the witnesses, they subscribed the same in my presence.

I have retained the said deposition' in my possession for the purpose of sealing up and directing with my own hand to 'he court for which the same were taken; and I certify that the same will be retained by me until I shall deposit the same with my own hand, sealed up and directed as aforesaid, in the post-office at Cleveland, Ohio, the place where the said depositions were taken; and I do further certify,
81 that I am not of counsel or attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof I have hereunto set my hand, this first day of October, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States of America the .

CLIFTON B. BEACH,
Notary Public for said County.

UNITED STATES OF AMERICA,
Northern District of Ohio, City of Cleveland,
County of Cuyahoga and State of Ohio, ss:

Be it remembered that on the 29th day of July, A. D. 1874, I, L. M. Schevan, a commissioner duly appointed by the circuit court of the United States for the northern district of Ohio, in the sixth circuit, under and by virtue of the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States, passed February 20, 1812, and the act of Congress entitled "An act in addition to an act entitled act for a more convenient taking of affidavits and bail in civil causes pending in the courts of the United States," passed March 1st, 1817, and the act entitled "An act to establish the judicial courts
82 of the United States," passed Sept. 24, 1789, did call and cause to be and personally appear before me at my office, at No. 81 Public Square, in the city of Cleveland, in the said northern district of Ohio, in the State aforesaid, John McCoy, to testify and the truth to say, on the part and behalf of the complainant, in a certain suit or matter of controversy now pending and undetermined in the district court of the United States for the northern district of Ohio, wherein William G. Winslow et al. are complainants, and the schooner Osborn, respondent, and the said John McCoy, being about the age of 37 years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said JOHN MCCOY, and he did thereupon depose, testify, and say as follows:

Q. 1. State your name, age, residence, and occupation.

A. My name is John McCoy; age, 37 years; residence, Milwaukee, Wis., and occupation, that of a sailor.

Q. 2. How long have you sailed, and in what capacity?

A. I have sailed about 16 years; ever since 1857. I have sailed in all capacities. I have been master for two years. I am now master of the barque Nelson—tonnage, 462; registry, carries over 800 tons.

Q. 3. On what vessel were you sailing in the season of 1872, and in what capacity?

A. On the barque Nelson, as mate, up to the month of August, and master the balance of the season. The collision between the Os-
83 born and American Union occurred during my first trip as master of the Nelson.

Q. 4. At the time of the collision between the Osborn and American Union, on what voyage were you, and where were you?

A. On that trip the Osborn left Escanaba just a little ahead of us—perhaps an hour ahead of me—perhaps an hour ahead of me into Lake Michigan. At 12 o'clock that night we were about ten miles from Big Beaver.

Q. 5. At about half-past eleven where were you and what did you then do?

A. We were off back of North Fox to the leeward of the track, and then we hauled the Nelson close by the wind on her port tack; she headed up northeast by north. The wind was baffling and the night was dark. We came up within about 5½ points of the wind, which would make the wind NW. by N. ½ N. Sometimes we baffled between NE. by N. & NE., making the wind baffling between NW. by N. and NNW.

Q. 6. From half-past eleven to half-past twelve that night did the wind shift any, and, if so, did it go to the westward or northward?

A. I know that it did not go to the northward; if anything it went to the westward. The wind did not get further north than NNW. I am certain of that. My best judgment is that the wind between the hours spoken of was NW. by N. ½ N.

Q. 7. In which way was the sea running that night, and what effect did it have?

A. About from the NNW., and had a tendency to throw *a*s to
84 the leeward.

Q. 8. How do you know that this was the night the collision occurred between the Osborn and the American Union?

A. I know it was about the 9th of August, 1872, and that the Nelson and Osborn left Escanaba nearly together that afternoon, and that I saw her on Lake Michigan at dark, eight or ten miles to the windward of us. The next morning I couldn't see anything of the Osborn, but when we got into the Detroit River, and while we were laying at Detroit, she towed past us in a disabled condition, and when we arrived at Cleveland I saw her captain, and he told me of the collision.

Q. 9. Where are you to be the balance of the season?

A. The vessel belongs in Milwaukee, and I generally sai*d* between Milwaukee and Buffalo and Detroit, and sometimes Chicago. My address is No. 498 Mineral st., Wilwaukee, Wis.

JOHN McCOY.

UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

I, L. M. Schevan, a commissioner duly appointed by the circuit court of the United States for the sixth circuit, northern district of Ohio, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes pending in the courts of the United States," passed Feb. 20th, 1812, and the
85 act of Congress entitled "An act in addition to an act entitled an

act for the more convenient taking of affidavits and bail in civil causes pending in the courts of the United States," passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the testimony of John McCoy is material and necessary in the cause, the title whereof is in the caption of said deposition named, and pending in the district court of the United States for the northern district of Ohio. I further certify that the above deposition was taken by the consent of the parties hereto.

I further certify that on the 29th day of July, in the year of our Lord one thousand eight hundred and seventy-four, I was attended by H. L. Terrell, esq., counsel for complainant, and by the witness aforesaid, who was of sound mind and of lawful age, and the witness was by me first carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and his deposition was by me reduced to writing in the presence of the witness aforesaid, and from his own statements, and after carefully reading the same to the witness he subscribed the same in my presence.

I have retained the said deposition in my possession for the purpose of sealing up and directing the same with my own hand to the court for which the same was taken; and I certify that the same will
86 be retained by me until I shall deposit the same with my own hand, sealed up and directed as aforesaid, in the U. S. clerk's office at Cleveland, O., the place where the said deposition was taken. And I do further certify that I am not of counsel or attorney for either of the parties in said deposition and caption named, nor in any way interested in the event of the cause named in the caption.

In testimony whereof I have hereunto set my hand this 29th day of July, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States of America the 98th.

L. M. SCHWAN,
U. S. Commissioner, duly appointed by the Circuit Court of the United States for the 6th Circuit and Northern District of Ohio.

In the U. S. district court within and for the northern district of Ohio.

THE STATE OF OHIO,
Cuyahoga County, ss:

H. J. WINSLOW AND WM. G. WINSLOW, plaintiffs,
against
THE SCHOONER S. S. OSBORN, DEFENDANT.

The respondent will take notice that on Friday, the 19th day of February, A. D. 1875, the above-named libellants will take the deposition of John Debbage, Thos. Banner, and Wm. Bain, sundry witnesses
87 to be used as evidence on the trial of the above-entitled cause, at the office of U. S. Commissioner Gorham, in the city of Buffalo, county of Erie, and State of New York, between the hours of eight o'clock a. m. and 6 o'clock p. m. of said day, and that the taking

of the same will be adjourned from day to day, between the same hours, until they are completed.

WILLEY, TERRELL AND SHERMAN,
Attorneys for Libellants.

I acknowledge service of the above notice by copy this 15th day of February, 1875.

PRENTISS AND VARCE,
Attorneys for Cross Libellants.

United States district court, northern district of Ohio. In admiralty.

HEZEKIAH J. WINSLOW AND WILLIAM G. Winslow
vs.
THE SCHOONER S. S. OSBORN, HER tackle, &c.

Depositions of sundry witnesses taken before me, George Gorham, U. S. commissioner within and for the county of Erie, northern district of New York, on the 19th day of February, 1875, pursuant to the annexed notice, to be read in evidence on behalf of the libellants in the above-entitled action. Mr. B. H. Williams, counsel for the libellants; Mr. C. M. Varce, counsel for the respondent.

88 THOMAS BANNER sworn, cautioned, and examined, said:

I am forty-seven years old. I live in Buffalo. My occupation is sailing. I have been a sailor since I was twelve years old. I have sailed as master since 1861, with the exception of one season when I was mate. I have been sailing on the lakes for the last twenty-two years. I was sailing as master in the season of 1872. I was then master of the schooner Eagle Wing. The schooner Eagle Wing was lying at anchor at Beaver Islands on the nights of the 9th and 10th of August, 1872. We were bound from Detroit to Escanaba. We anchored on Beaver Islands between six and seven o'clock in the evening of the 9th August, 1872. We remained at anchor there till daylight on the morning of the 10th. About eleven o'clock that night I was on deck; the wind was then under the Islands about northwest. We came to anchor because the wind was ahead and squally, so far ahead I couldn't sail my vessel.

Cross-examined:

I came up on deck about eleven o'clock p. m.; I remained on deck probably three or four or five minutes. We anchored on the lee of the Beaver, about four miles to the northward of the light-house, about two or three miles off shore, and perhaps not quite so far. We remained at anchor till about daylight. It may have been six o'clock when we got under way. When we started the wind was about northwest
89 by north. When we anchored I saw a vessel laying at anchor in Sand Bay, but I could not tell what vessel it was. It was squally. It was squally when we came to anchor, and that lasted half an hour or so, and we had no more squalls that night. I do not recollect whether it rained during the night or not. The wind at eleven o'clock was too scant for me to start out then for Escanaba. My vessel was light. I did not see the American Union when she went out from Sand Bay. The watch said next morning that a vessel passed out, but they could not tell what it was.

I think we arrived at Escanaba the next evening, but I could not be positive. I could not tell the hour of day we arrived there.

I anchored under the Beaver twice afterwards that same season, once in Sand Bay and once nearer the harbor. The harbor is about northwestward of the island.

I anchored in Sand Bay along towards the fall—I think it must have been about the first of November I anchored near the harbor that same trip. I got under way and went back again. I can't give the exact day when I anchored in Sand Bay. The wind was about SW. I was then bound for Escanaba too. I came up too close under the harbor one night about nine o'clock and lay there till next forenoon, got under way and came to anchor in Sand Bay that same night. The wind was from W. to SW. all the time. I got under way thinking I could beat off. The wind, as near as I can get at it was from SW. to W. I did not keep a regular log book that year. I fix the exact
90 day when I anchored under the Beaver, because I remember hearing them speak about it and I saw the American Union come into Escanaba. I got to Escanaba first.

The wind might have been a little further to the north than NW. but it was a little baffling under the island. You can tell within a point and a half or two points how the wind was off to the westward of the island from where I was. The chart course from the head of the island to Waugochance light is about NE. ½ E. A northwest wind is a fair wind to sail that course. There would be no difficulty in sailing NE. or ENE. with a northwest wind. I did not have a conversation with Captain Seamons in regard to the course of the wind that night. I did not to my knowledge tell Capt. Seamons. I could not tell the course of the wind that night because I was not on deck. I talked with Captain Parsons about the course of the wind when he came in to Escanaba that trip. That was the same day Parsons came in. I could not say exactly how quick it was.

I don't know that I have talked with him since, on that subject. He spoke to me about it to-day and asked me if I knew how the wind was at that time. Captain Parsons is present. I sailed the schooner Thomas P. Sheldon last season. I expect to sail the same vessel the comming season. In 1873 I sailed the Sheldon. Fish and Brown, and Fish & Armstrong own the Sheldon. Neither of the Winslow's have any interest in the Sheldon.

Re-direct:

We lay waiting for the weather to clear up.

91 Re-cross:

When we got under way the wind was about NW.

Re-direct:

When I went on deck that night I should think there was a whole sail breeze.

THOS. BANNER.

Subscribed and sworn to before me February 19th, 1875.

GEO. GORHAM,
U. S. Commissioner.

JOHN DEBBAGE, sworn, cautioned and examined, said:

I live in Oswego. I am fifty years of age. I am a sailor. Have been sailing about forty years. Have sailed on the lakes twenty-three seasons. Have sailed as master for the last five years, and before that

I sailed as master 35 years ago in England; some 10 or 12 years ago I sailed as master part of a season. In season of 1872 I was sailing as master of the barque John P. March, of Chicago. On the 9th or 10th of August I am not positive which, but it was the night of this collision, I passed the American Union about six or seven o'clock in Sand Bay. She was at anchor. I was going to Chicago from Cleveland. I went right along. About this time the wind changed from south and blew NW. or NW. by N. and blew pretty fresh. It rained a little when the wind first changed. The wind continued in that direction till about eleven o'clock. When I arrived at the Fox's, and then it hauled a little more to the westward, about 2 points away making it about NW. by W. at midnight, my impression is that it hauled a little to the
92 northward, after I got past the Foxes' and then blew about NNW. and after that it gradually worked to the north as it cleared off. I passed through a streak of fog from about nine to eleven, and then it cleared about eleven and was clear at midnight. At midnight it was blowing about 7 to 8 knot breeze. The South Fox is about 25 miles from Beaver Island, Sand Bay.

Cross-examined:

I passed west of the Manitous. The chart course from Beaver is about SW. by south to the head of the Fox. I left Cleveland on that trip. I don't exactly recollect when, three or four days before this. I did not come to an anchor under the Beaver, I passed right on up without coming to an anchor. I passed within two or three miles of the American Union. Did not see Skillagalie light at all. We made the lighthouse about four o'clock that afternoon. Had been beating all day pretty much. Had run tacks of three or four miles. The wind was no better till it shifted. I was on deck all day that day, and till twelve o'clock that night except meals, &c. The wind had been substantially ahead till about seven o'clock, and at that time I was standing toward Beaver Island, Sand Bay where the American Union lay. It shut down dark a little after 8 that night. I stood in to about three miles of the beach. I saw indications of the wind changing, and went around, as soon as I got the wind I stood on the course SW. about, and this
93 was before eight o'clock, I anchored off the Beaver and about half way over to the Foxes, where I got into the fog.

The wind was steady till about half past eight or nine, and at that time I was just passing the Foxes. After I passed the Foxes it hauled ahead a little, and then it was steady about an hour. At this time the fog had cleared. I went through that same passage again several times that season. I went through again in seven or eight days. The next morning at about four I was west of the Manitous, and the wind was then about north. It had been going north the previous two or three hours. When I got in the lee of the North Fox, the wind began to haul ahead a little to westward. As soon as I got four or five miles clear of the Fox it hauled to the northward; again at six o'clock that morning I had the wind NE. I don't recollect how I had the wind seven or eight days later when I went through. My impression it was SW. I don't recollect how it was off the Beaver the next trip coming down. I next saw the American Union at Cleveland, I think, when I arrived there the next trip. The Osborn was in Cleveland the same time. I had a conversation with Captain Seamons, but not with Captain Parsons. Never had any conversation with Captain Parsons about the wind or collision. Have talked with Captain Parsons some of it to-day. I came from Oswego here to testify in this case. I sailed the Mach in 1873 and '74, and I

expect to sail her in 1875. She is owned by Benton and Pearson and myself, we are the sole owners. Neither of the Winslows have any interest in her.

94 The breeze got lighter as we got up the lake, at least I found it so at four o'clock. The chart course from Beaver to Wanguschance is about NE.

Q. From 5 p. m. to 4 a. m. was there any difficulty in laying the course from Beaver to Wanguschance light?

A. No. There was not much sea that night, though there was considerable in the afternoon, quite a sea. The sea was coming from the NW. while we were under the Foxes, after we passed it was making from that direction, but there was very little of it. I fix that particular night because my attention was called to it several times that season, and when I arrived at Buffalo that same trip.

I do keep a diary; did at that time on that trip. If my attention is called to it in the same trip I can tell the wind at any day within a week or ten days. I can't remember all the changes of the wind particularly in a trip, but generally. I made a statement of this matter several times, and my attention has been called to it several times every year.

Redirect:

At twelve o'clock that night my impression is it was a pretty fine clear night. I was then about west of the South Maintou.

JOHN DEBBAGE.

Subscribed and sworn before me February 19th, 1875.

GEO. GORHAM,
United States Commissioner.

WILLIAM BAIN being cautioned, examined, and sworn:

95 I live in Buffalo; I am a seaman, & have been thirty-five years—about thirty-five years on the lakes. I have been master 25 years. I know the schooner American Union; have known her about ever since she was built; I have examined her to see what kind of lights she carried and how they were carried. It was about the middle of November, 1874. The lights were lit about half past six, and the parties who were examining her with me went abeam of the vessel, ahead, and on both beams, and every place that was required to see that her lights showed good. I found them all right. The green light was on the starboard side and red light on the port side. The green light was placed a little forward of the mizzen rigging on the rail and the red light the same on the port side. This was, I believe, on the main rail and secured to the monkey rail. I did not examine very closely as to that. In fact we did not go aboard of her; we went ahead and around. I noticed they were carried in the same place I carry my lights. I observed the lights; they were good lights—I mean good and proper for a vessel of her size. The green light shown abeam, forward of abeam, and directly ahead, and the same with the red light. They had the usual wooden screens.

(The counsel for respondent enters an objection to all testimony in regard to the lights.)

The American Union was lying in the C slip in Chicago at the time of this examination, headed to the southward. I have been a master for 25 years. The majority of vessels carry their lights where this vessel had hers.

96 Cross-examination:

This examination was not made with regard to this collision suit so far as I know. I made the examination by request of Captain Prindeville. I did not know who owned the vessel. Captain William Cary and myself made this examination. Captain Cary lives in Chicago. No other persons assisted. The vessel was lying in C slip. We examined from the dock; we were 150 to 200 feet away from her when we were abeam. We examined her from ahead at the upper end of the slip from the dock. When we were ahead of her we were 800 to 1,000 feet off. Both lights were visible when we were directly ahead. Passing a little to either side of dead ahead one was shut in. She was light at this time. I did not examine the screens to see by what means they were fastened to the vessel. The lights were six to seven feet forward of the mizzen rigging. I did not measure, but I judged they were about where mine are. I sailed the Onondaga. A. C. Taylor owns her—sole owner. She is the same rig as the American Union. The two vessels are pretty near the same size. The distance from the main to mizzen masts on the Onondaga is 56 ft. No measurements were made at this examination. The master of the American Union placed the lights. Prindeville was with us. I don't know a better place to carry the lights than on the rail by the mizzen. We carry them there because they are more out of the sea and danger. A large vessel can't carry them on the fore-rigging, because the square sails interfere. We take the screens off in port. I had heard

97 of this collision but thought it was settled.

I was on Lake Michigan at time of this collision; off the Manitous, about 80 miles from the head of the Beaver; bound for Chicago. I had the wind at eleven that night of the collision the 9th August, '72, north by west. I was not on deck after 12 till 2. At 2 I was called and the wind was canting easterly. The wind was then about north by east. When I made the examination of the lights Prindeville asked me to go, and spoke of the collision, and I said I supposed it was settled. If a vessel choose to carry her lights forward and run the risk of losing them it is a good place to carry them.

WILLIAM BAIN.

Subscribed and sworn to before me Feb. 19, 1875.

GEO. GORHAM,
U. S. Commissioner.

NORTHERN DISTRICT OF NEW YORK, *ss:*

I, George Gorham, one of the commissioners of the circuit court of the United States for the northern district of New York, do hereby certify that on the 19th day of February, 1875, at the hour of eleven o'clock in the forenoon at my office, in the city of Buffalo, I was attended by Mr. B. H. Williams, of counsel for the libellants in the foregoing entitled suit, and by Mr. C. M. Varce, of counsel for the respondent, and by the witnesses; that the said witnesses were duly cautioned and sworn and examined, and their examination was reduced to writing by me and the said several depositions were signed by the said several witnesses, and that I am not of counsel or attorney for either of

98 the parties to the said suit nor am I interested in the event thereof.

In witness whereof I have hereunto set my hand and seal this nineteenth day of February, 1875.

GEO. GORHAM. [SEAL.]
U. S. Commissioner.

In the district court of the United States for the northern district of Ohio.

WILLIAM G. WINSLOW AND HEZEKIAH J. Winslow
vs.
SCHOONER S. S. OSBORN.

AND

CROSS-LIBEL OF BLISS A. WILCOX
vs.
SCHOONER AMERICAN UNION, W. G. WINSlow, and H. J. Winslow.

STATE OF MICHIGAN,
County of Wayne, ss:

I certify that pursuant to the notice hereto attached at the time and place therein stated, before me, personally came the said Morris Barrett, Christopher F. Moore, and James P. Cotton, all of lawful age, each of whom were by me first severally sworn to tell the truth, the whole truth, and nothing but the truth; that their testimony was by me taken down in writing in their presence and thereafter read to them
99 severally before signing. I further certify that W. A. Moore, esq., appeared for libellant, and Loren Prentiss, esq., for respondent, and that I have no interest in the matter at issue.

JAMES J. KELSO,
Notary Public, Wayne County, Michigan.

DETROIT, *M'ch, 19th*, 1875.

The said MORRIS BARRETT testified as follows:

I live in Detroit; sailed most of the time; sailed since '54; sailed as master about 14 years of tugs, principally in the rivers and lakes here. Last year sailed a vessel and the year before a sailing vessel, the Guiding Star. In the year 1872 and part of '71 sailed the tug M. J. Mills; know the bark American Union; have towed her; last time in '72 from Lake Erie to Lake Huron; towed her all night the nights of the 4th and morning of the 5th of July. I didn't notice anything wrong about her lights. If there had been anything wrong I would have noticed it. There was nothing to attract my attention to them more than ordinary. I had charge of the deck until 12 o'clock at night. My mate, Mr. Cartwright, had charge from 12 till the morning. The vessel was light. I had two other vessels in tow. I don't recollect their names.

Q. If there had been any difficulty in seeing her lights while in tow, state whether or not you would have been likely to have noticed it.

(Objected to as incompetent.)

A. Yes, sir; I should have noticed it.

100 Cross-examination:

The American Union was next to the tug. It was not a very dark night; a clear, starlight night. I had no occasion to refer to the lights on the vessel to guide me. The lights on the Union. I couldn't say where she carried them.

MAURICE BARRETT.

Subscribed and sworn to before me this 18th day of March, A. D. 1875.

JAMES J. KELSO,
Notary Public, Wayne County, Michigan.

And the said CHRISTOPHER F. MOORE testified as follows:

I reside in Detroit; I am a master of tug boats, and have been 18 years off and on. I know the bark American Union. I have towed her in the night. I have noticed her lights when I towed her. She had good lights; have seen her different times; she had always good lights on her.

(Objection made as to testimony as to what lights she had at other times.)

Q. Will you state whether you ever noticed whether you could see both of her lights from dead ahead.

A. Well, no, sir; I don't remember of being in that position. I might have been in that position but cannot say positively, although I may have been half a dozen times. I wouldn't be very positive as to where she carried them, but I have an idea it was forward. We are not particular as to whether they carry aft or forward. Could
101 not tell exactly the number of times I have towed her, but a number of times; could tell by looking at my books a good many years back.

Q. Please state whether, if there had been any difficulty in seeing her lights, you would have noticed it while towing her.

(Objected to as incompetent and leading.)

A. Yes, sir; I would have noticed it right off.

Q. State whether you recollect of ever noticing any difficulty about her lights.

(Same objection.)

A. No, sir; not when I had her in tow.

Q. Can you state occasions when you met her at night?

A. Once after dark, about 9 o'clock, off Cleveland, about 15 miles off; once also in Lake Huron.

Q. What lights was she showing on the occasion of your meeting her off Cleveland?

A. Green light when I first saw her; as I left her I saw a red light.

Cross-examination:

Q. Was it necessary for you to refer to the lights of the Union to guide you in towing the vessel?

A. I always sing out to them when it is time to put up their lights. I could guide myself without the lights of the vessel. We don't care anything about their lights particularly to guide us.

Q. Question repeated.

A. No, sir; I refer to the lights being required to be out when towing her. I can steer my boat without them.

Redirect:

Q. State whether or not it is necessary for you to notice the
102 lights of a vessel to determine whether she is following you or not.

(Objected to as incompetent and leading.)

A. Yes, sir. It is the only way we can find out on a dark night. It is the only thing we can see of them.

Q. On a dark night how do you determine whether a vessel is following you well or not?

A. By her lights. If one or more of the vessels in tow should take a sheer off you would see but one light, either red or green.

Q. What is the test of a vessel following you well on a dark night? What are the lights?

A. Well, if it is one vessel both lights. That is true of half a dozen vessels, unless the lights are obscured by other vessels.

(Objected to as to the last part of the answer as being in answer to a leading question, and incompetent.)

C. F. MOORE.

Subscribed and sworn to before me this 18th day of March, A. D. 1875.

JAMES J. KELSO,
Notary Public, Wayne County, Mich.

And the said JAMES P. COTTON testified as follows:

I live in the city of Detroit; my present business is keeping a wood-yard.

Q. What has it been for the last five years?

A. Sailing; been sailing as master of vessels for about 20 years
103 on these lakes. In 1872 I was sailing as master schooner William Sanderson. I know the barque American Union. I recollect seeing her, as I supposed, laying to an anchor under the north side of Beaver Island about the 9th of September, '72; it was at Sand Bay, as we called it. We reached there about 10 o'clock in the daytime and found this American Union laying at harbor.

We were laying there on account of heavy SW. wind. We remained about 20 hours. The American Union left in the evening of the same day, in the forepart of the evening. She wasn't there at 12 o'clock at night, but was there at dark; did not see her go. I turned in between 8 and 9 o'clock at night, and she was there at 8 o'clock, for I saw her anchor light at that time. I was called at 12 o'clock; she was gone then. I was up probably half an hour at 12 o'clock; got up and dressed myself and remained about that time, and then turned in again; was up again between 4 and 5 in the morning. We weighed anchor and left there about 8 o'clock.

Q. How was the wind as to force and direction when you turned in at eight o'clock in the evening?

A. The wind was southwest, the wind was lulling down then.

Q. How was the wind at 12 o'clock when you were up?

A. Wind was west-northwest what little there was of it.

Q. How was it when you got up in the morning?

A. There was not any at all, not that you could perceive.

Q. How was it when you weighed anchor and left?

A. Well, what little there was was about NW.—it may have been a little more to the northward.

Q. Where were you bound?

104 A. Green Bay.

Q. What was your heading to Green Bay?

A. West by south.

Q. How was the wind to you after you got under way?

A. The wind followed me right around the island. I got out clear of the Beaver about 2 o'clock in the afternoon. After I got round the island the wind was to northward.

Cross-examination:

Q. Did you look at the compass while you lay there at Sand Bay?

A. Yes, sir; looked at it a great many times. That is the way I ascertained how the wind was before I turned in, by looking at the compass. I looked at it at 12 o'clock when I got up.

Q. Does the needle vary there any?

A. Not that I know of.

Q. Had you any sail up while you lay there?

A. I had our mainsail up and no other.

Q. How long did you stay up when you got on deck?

A. I should think half an hour; it might have been longer, but not less than that.

Q. Are you sure it was September that you saw the Union there, and not August?

A. Well, I will not be sure, but I think it was September. It was the time I was there myself; may have been August. It was the only time I lay there ever.

Q. How was the wind after you passed Beaver Island to you?

A. The wind was free. I was sailing before the wind. On
105 reflection, I wish to add that I think the time was August, not September.

Redirect:

Q. At what place on Green Bay were you bound, and at what point did you enter the bay?

A. Place called Little Sturgeon Bay, and I entered at Louse Island Passage; the other passages are called Death's Door and Poverty Passage.

Q. How long after that did you hear of the collision?

A. I can't tell how long, but heard of it when I got down next trip. I might have heard of it in Chicago, when I got up, but I am not sure. Mr. Winslow's folks in the fall, in December, as I was laid up in Buffalo, asked me if I knew anything about this collision, how the wind was, as I was laying there.

JAS. P. COTTON.

Subscribed and sworn to before me this 19th day of March, A. D. 1875.

SAMUEL J. KELSO,
Notary Public, Wayne Co., Mich.

In the district court of the United States for the northern district of Ohio.

WILLIAM G. WINSLOW AND HEZEKIAH J. Winslow
vs.
SCHOONER S. S. OSBORN.
} United States court.

And cross-libel of—

BLISS O. WILCOX
vs.
SCHOONER AMERICAN UNION, W. G. & H. J. Winslow.

CLEVELAND, *March* 15, 1875.

106 SIRS: You are hereby notified that James P. Cotton, John Wilkinson, Thomas McLoovan, Christopher F. Moore, and Morris Barrett will be examined de bene esse before me, at my office, at No. 3, 1st floor, Moffat block, Detroit, on the 17th day of March, A. D. 1875, at 3 o'clock p. m. of said day, as such witness for the above-named libellants according to the act of Congress in such case made and pro-

vided at which time and place you are entitled by law to be present, and put interrogatories to said witnesses.

SAMUEL J. KELSO,
Notary Public, Wayne Co., Mich.

To PRENTISS and VARCE,
Att'ys for the above-named Respondents.

Received a copy of the above notice at 3 p. m. March 15th, 1875.
PRENTICE AND VARCE,
Att'ys for Def'ts.

DISTRICT OF MICHIGAN,
Wayne County, ss:

I, Samuel J. Kelso, notary public in and for the county of Wayne, State of Mich., do further certify that under and by virtue of the said several acts of Congress in such case made and provided, that the reason for taking the foregoing deposition is, and the fact is that the witnesses reside more than one hundred miles from the district
107 court of the United States for the northern district of Ohio, where said case is to be tried, and that the proctors for both libellants and respondents, reside in Cleveland, Ohio.

I further certify that due notice of the taking of said depositions was served on Messrs. Prentiss & Varce, attorneys for defendants, which said notice and acceptance of service thereof is hereto attached, that by consent of parties said time for taking depositions was postponed until the 18th March, 1875.

I further certify that on the 18th day of March, A. D. 1875, I was attended by William A. Moore, esq'r, solicitor on behalf of libellants, and by Loren Prentiss, esq., solicitor on behalf of defendants, also by Morris Barrett, Christopher F. Moore, and James P. Cotton, witnesses, who were of sound mind and lawful age, and the said witnesses were by me first severally, carefully examined and cautioned, and sworn to testify the whole truth, and nothing but the truth, and the deposition was by me reduced to writing in their presence, respectively, and after the same was carefully read, they, the witnesses aforesaid, subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of sealing it up, and directing it with my own hand to the court, for which the same was taken; and I do further certify that I am not of counsel nor attorney for either of the parties in deposition and caption named, nor in any way interested in the event of the cause named in said caption.

108 In testimony whereof I have hereunto set my hand and seal this twenty-second day of March, in the year one thousand eight hundred and seventy-five.

SAMUEL J. KELSO, [SEAL.]
Notary Public, Wayne County, Mich.

UNITED STATES OF AMERICA,
Northern District of Ohio, City of Cleveland, County of Cuyahoga, and State of Ohio:

Be it remembered that on the 3rd day of May, A. D. 1875, I, L. M. Schwan, a commissioner duly appointed by the circuit court of the United States for the northern district of Ohio, in the sixth circuit, under and by virtue of the act of Congress entitled "An act for the more

convenient taking of affidavits, and in civil causes depending in the courts of the United States," passed February 20th, in 1812, and the act of Congress entitled "An addition' to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed Sept. 24th, 1789, did call and cause to be, and personally appear before me, at my office at 81 Public Sq'r, in the city of Cleveland, in the said northern district of Ohio, in the State aforesaid, Solon S. Rummage, E. M. Perkins to testify, and the truth to say on the part
109 and behalf of libellants in a certain suit or matter of controversy now pending and undetermined in the district court of the United States for the northern district of Ohio, wherein Wm. G. Winslow et al., ar' libellants, and the schooner S. S. Osborn, respondent.

And the SOLON S. RUMMAGE, being about the age of 55 years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid. I did thereupon depose, testify, and say as follows:

Q. 1. What is your name, age, and occupation, and how long have you been so occupied?

A. My name is Solon S. Rummage; age, 55; occupation a sailor. Have been sailing since 1833.

Q. 2. In what capacity have you sailed since then?

A. Seven or eight years before the mast, and seven or eight years I was mate. Have been sailing as master ever since 1847. Sailed schooners, propellers, tugs, and all kinds of vessels.

Q. 3. What vessel did you sail last year?

A. Last year I was on the steamer Persian as master. The year before that I was on the tug Admiral Porter, and in the year 1872 I was on the tug Cleanatios. Towed the American Union twice or three times that year.

Q. 4. Are you acquainted with the build of the American Union?

A. She is built very much as ordinary vessels of her size are. She tumbles in about the same as ordinary vessels of her size. I had towed her previous to the year 1872. During the year 1872 I towed her twice or three times.

110 Q. 5. Did you at any time during the year 1872 tow her in the night time?

A. The last time I towed her from here to Lake Huron was in the night time. This was in the latter part of the season of 1872. We left here one afternoon and arrived at Port Huron the next afternoon.

Q. 6. At this time where did the American Union carry her lights?

A. She carried them about one-third of the way forward from her stern; that is, just forward of the mizzen-rigging.

Q. 7. On this occasion how far was the tug forward of the American Union?

A. Between 200 and 250 feet.

Q. 8. At any time during the night upon this occasion was the tug dead-ahead of the schooner?

A. She was dead-ahead of her most of the time.

Q. 9. When in that position state how were the lights of the American Union, whether visible or not.

A. The tug being narrower than the schooner they could not be seen without a little variation. The Union is about ten feet wider than the tug. If the tug had been as wide as the vessel we could have seen both lights when dead-ahead of her.

Q. 10. Do you know the schooner Osborn?

A. I do.

Q. 11. With the schooner Osborn 200 feet dead-ahead of the American Union what difficulty, if any, would there be in seeing the Union's lights from the Osborn?

111 A. In walking the deck there would be no difficulty. An ordinary outlook would see both lights.

Q. 12. Suppose the Osborn to be approaching the Union from one to two points over the Union's port-bow, what difficulty, if any, would there be in the outlook of the Osborn seeing the port-light of the Union?

A. There would be no difficulty whatever.

Q. 13. In your opinion where is the proper place for a vessel of the size and build of the American Union to carry her signal-lights?

A. I should think they were in their proper place. I should not want to carry them anywhere else.

Q. 14. Where do vessels of her size and build usually carry their signal-lights?

A. The most of the vessels carry them on the quarter, where she did; a few carry them forward.

Q. 15. What do you say as to the propriety of carrying the lights forward?

A. I do not think it is the proper place, from the fact that both lights are apt to get mixed up. When the lights are forward you can vary a point and still see both lights, and you can't tell her course till you get very close. When the lights are aft on the quarter you cannot possibly make a mistake.

Cross-examination by Mr. VARCE:

Q. Where do you reside?

A. At Cleveland.

Q. What vessel do you sail this year?

A. I am building a tug here in Cleveland.

112 Q. Did you ever make any examination with the special view of determining in what manner and from what points and directions the American Union's lights could be seen?

A. No, sir; nothing special; nothing further than general observation.

Q. How wide is the American Union?

A. About 30 to 32 feet, I should say.

Q. About what is her length?

A. I can't tell exactly; from 140 to 160, I think. That is as near as I can get at it without measuring.

Q. How do you fix the date when you last towed her?

A. I don't fix the date any other way than that I know that it was in the latter part of the season. I am positive I towed her in 1872.

Q. What makes you positive of that year?

A. My books and tow-bills. That was the last year I was in the tug Clematus.

Q. Have you referred to your books and bills to ascertain the year?

A. I don't know that I have, but I remember the year very well. I could not state the month except by referring to the books.

Q. What kind of screens did she carry on that trip?

A. About 5 or 6 feet long. Two boards nailed together at right-angles, about 14 or 16 inches high. That is ordinary height. Could not say how they were fastened on rail. I was not on board of her nor astern of her.

Q. Was the American Union loaded or light on that trip?
113 A. She was light; I think she had on some cargo, but it was light.
Q. What kind of a night was it?
A. An ordinary calm night, dark, no moon; I don't remember about that; no wind; I was up a good deal of the night—more than half the night.
Q. Were you aboard the American Union?
A. Yes, sir; a great many times. I was aboard of her when they were building her.
Q. Were you ever aboard of the Osborn?
A. Yes, sir; I was aboard of her at the the time she came in here after the collision. I went on board of her the next morning. I should say the Osborn was the largest vessel of the two. I suppose they are both built in pretty much the same manner. The models are different; the American Union is built sharper and draws more water both light and loaded than the Osborn.

Redirect by Mr. TERRELL:

Q. Were the screens of the Union the ordinary screens of vessels of her kind?
A. Yes, sir; the ordinary screens and the ordinary length.

S. S. RUMMAGE.

Subscribed and sworn to before me this 3rd day of May, 1875.

S. M. SCHWAN,
U. S. Commissioner.

114 EDWIN M. PERKINS, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

Q. 1. What is your name, age, residence, and occupation, and how long have you been so occupied?
A. My name is Edwin M. Perkins; age, 35 years; residence, Cleveland, and occupation a sailor. Have been sailing for 23 years. Sailed about eight years before the mast and about fifteen years as mate and master.
Q. 2. Do you know the schooner American Union?
A. Yes, sir.
Q. 3. How long have you known her?
A. About seven years.
Q. 4. Did you ever sail on her?
A. No, sir.
Q. 5. From the time you first knew her up to the close of the season of 1872, how frequently did you see her?
A. Probably 50 or 60 times; often sailed in company with her.
Q. 6. Where did she carry her lights?
A. She carried them on the quarter, anywhere from four to six feet forward of the mizzen rigging.
Q. 7. How did the model of the American Union compare as to tumbling in with that of ordinary vessels of her size?
A. Just about the same as in vessels that were built about the time she was built; very little difference, if any.
Q. 8. What is the usual place in vessels of her size for carrying
115 the signal-lights?
A. Eight out of ten carry them on the quarter; at least as many as that.

Q. 9. What, in your opinion, is the proper place for a vessel of her size to carry her signal-lights?

A. On the quarter.

Q. 10. What do you say as to the propriety of carrying the signal-lights forward?

A. Carrying them forward on the 'night-heads I consider very dangerous. They are so near together that you can vary a point from one side to the other and yet see both lights. This makes it impossible to tell the vessel's course; when carried on the quarter there can be no such trouble.

Q. 11. Do you know the schooner Osborn?

A. Yes, sir.

Q. 12. What difficulty, if any, with the Osborn and American Union approaching one another end on would there be in seeing the lights of the American Union on the Osborn?

A. I should think there would be no difficulty if the lamps were burning all right.

Q. 13. Suppose the Osborn were approaching the American Union from one point or more over the Union's port-bow, what difficulty would there be, if any, in seeing the port-light of the Union from the Osborn?

A. I don't think there would be any difficulty at all.

Q. 14. Does or does not the Union tumble in enough to obscure the lights from a vessel like the Osborn, approaching her from dead ahead?

A. I don't think she does.

Q. 15. How high above the decks were the lights of the Union?

116 A. I think about four feet.

Q. 16. Would the fact that the approaching vessel was loaded and the Union light make any difference in respect to seeing her lights?

A. No, sir; I think not.

Cross-examination by Mr. VARCE:

Q. Did you see the American Union on the trip during which she collided with the Osborn?

A. Yes, sir; I did.

Q. Whereabouts?

A. Here in Cleveland, when she was repairing after she got back here; I went aboard of her then.

Q. Did you ever make any examination of the American Union and of her lights, or of the place where they were carried, with the particular object of determining from what position they could be seen?

A. No, sir; no special observation.

Q. Do you know how much she tumbles in?

A. I do not. I know how she is with the average class of vessels at the time she was built, but I don't know how much to the inch.

Q. Did you ever examine her to ascertain whether she tumbles in more or less than the average vessels of her size?

A. That I can't say, because they don't build vessels now the way they did then. Those built nowadays don't tumble in so much as those built eight or ten or twelve years ago. They then built them for speed, but now they build them for carrying a cargo.

117 Q. Did you ever make an examination to ascertain just how the American Union's lights were placed and screened?

A. Yes, sir; I had occasion to notice at one time how that was. It was at the wood dock in St. Clair River.

Q. How were they placed there?

A. The green light was then on the starboard quarter, about from four to six feet forward of the mizzen rigging, and was attached on the rail by a common screen. It was fastened on the monkey-rail; did not notice just how.

Q. What vessels do you sail?

A. I sailed the Yosemite last year; am not sailing her this year; am not sailing any, but have quit.

Q. Have you ever been dead ahead of the American Union when her lights were burning?

A. Yes, sir; this time that I have spoken of in the St. Clair River, she was astern of us. I was then on the Levi Rawson.

E. W. PERKINS.

Subscribed and sworn to before me this 3rd day of May, A. D. 1875.

L. M. SCHWAN,
U. S. Com'r.

UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

I, L. M. Schwan, a commissioner duly appointed by the circuit court of the United States for the sixth circuit and northern district of Ohio under and by virtue of the act of Congress entitled "An act
118 for the more convenient taking of affidavits and bail in civil causes pending in the courts of the United States," passed February 20th, 1812; and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes pending in the courts of the United States;" passed March 1st 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the testimony of Solon S. Rummage E. M. Perkins is material and necessary in the cause the title whereof is in the caption of said deposition named and pending in the district court of the United States for the northern district of Ohio.

I further certify that no notification of the time and place of taking said deposition signed by me was made out and served on the respondents to be present at the taking of said depositions, and to put interrogatories if he, or they might think fit, but that the depositions above, were taken by consent of the parties.

I further certify, that on the 3rd day of May, in the year of our Lord one thousand eight hundred and seventy-five, I was attended by H. L. Terrell, for libellants, and C. M. Varse, for respondents, and by the witnesses aforesaid, who were of sound mind and of lawful age; and the witnesses were by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the
119 truth, and their depositions were by me reduced to writing in the presence of the witnesses aforesaid, and from their own statements, and after carefully reading the same to the witnesses, they subscribed the same in my presence.

I have retained the said depositions in my possession for the purpose of sealing up and directing the same with my own hand to the court for which the same were taken; and I certify that the same will be retained by me until I shall deposit the same, with my own hand sealed up and directed as aforesaid, in the post-office at Cleveland, Ohio, the place where the said depositions were taken; and I do further certify that I am not of counsel or attorney for either of the parties in the

said depositions and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof I have hereunto set my hand this 3rd day of May, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the United States of America the ninety-ninth.

L. M. SCHWAN,
U. S. Commissioner.

120 In the district court of the United States within and for the northern district of Ohio.

WILLIAM G. WINSLOW ET AL.
vs.
SCHOONER S. S. OSBORN.

The respondent will take notice that on Thursday, the 1st day of March, A. D. 1877, the above-named libellants will take the depositions of W. P. Bryan, to be used as evidence on the trial of the above-entitled cause, at the office of George Hilton, in the city of South Haven, county of Van Buren and State of Michigan, between the hours of eight o'clock a. m. and six o'clock p. m. of said day, and that the taking of the same will be adjourned from day to day between the same hours until they are completed.

WILLEY, TERRELL AND SHERMAN,
Attorneys for Libellants.

I acknowledge service of the above notice by copy, this 23rd day of February, 1877.

PRENTISS AND VARCE,
Attorneys for Respondents.

THE STATE OF MICHIGAN,
County of Van Buren:

Deposition of William P. Bryan, taken before me, O. N. Hilton, a notary public in and for Van Buren County, Michigan, on the 1st day of March, 1877, between the hours of eight o'clock a. m. and
121 six o'clock p. m., at South Haven, in said county, pursuant to the annexed notice, to be read in evidence on behalf of the libellants in an action pending in the United States district court within and for the northern district of Ohio, wherein Wm. G. Winslow et al. are libellants, and the schooner S. S. Osborn is respondent. Present on behalf of libellants, L. M. Schwan, of Cleveland, Ohio, and on behalf of respondent.

Q. 1. What is your name, age, residence, and occupation?

A. My name is William P. Bryan; age, forty-nine years; South Haven, Van Buren County, Michigan; occupation, seaman.

Q. 2. Are you acquainted with Charles O. Ingraham, formerly mate of the barque American Union?

A. I am.

Q. 3. What, if anything, do you know in regard to a correspondence between Ingraham and one Bailey, of Toledo, a shipbuilder, in reference to the testimony of Charles O. Ingraham in the collision case now pending between the owners of the American Union and the schooner S. S. Osborn?

A. In the winter of 1873 and 1874 Charles O. Ingraham came to my office and showed me a letter from Bailey, of Toledo, asking him what he knew of a collision between the American Union and the Osborn, and whether or not his testimony would be of service to them, requesting an answer; that he was the builder of the Osborn and took an interest in the welfare of her owners. Ingraham requested me to answer that letter, and word the letter so that he should not commit himself should he be called upon on the Winslow side again, but to
122 give Bailey to understand that if his testimony was to be paid for it would be of service to the owners of the Osborn. I wrote such a letter for him and to it signed his name. At this same time he, Ingraham, told me that he had been already once called on the same suit by Winslow, but that they didn't pay him very well, and that, as he was hard up, he proposed to work for the parties that paid him the most.

In about three or four weeks he came to me with another letter, an answer to this last, asking him to state more fully what he knew of the matter and what he would charge them should they send for him. I answered that letter, also, as he dictated to me and at his request.

The substance of the letter was: "My testimony will be of service to you when I tell the truth, even though it injures those I was sailing for; and if called upon I shall have to tell those facts; and if you require my services I will go down for $100, with $50 to be paid in advance, and the balance, $50, to be paid me on my arrival at Toledo, as I shall need it for the support of my family." He also said that he was hard up, and that his testimony would be of benefit to the owners of the Osborn if they paid him; and he also asked me if this was not right. I replied: "You are your own master."

About one month afterwards he got an answer to this letter, which he also brought to me, stating that his offer was accepted, and that the money would be forthcoming when his testimony was needed.
123 He also said that if they complied with this promise he would go. He also brought me another in about two months, stating that the suit was postponed, and stating to what time, but that his offer was accepted and that his money should be forthcoming.

Q. 4. State, if you please, what, if anything, you know in regard to Ingraham's having received the whole or any part of the money above spoken of in these letters.

A. In November, 1875, Charles O. Ingraham's wife received draft from Bailey, of Toledo, of $50, which she brought to me and asked for my assistance to help her negotiate it, as she wished to go to Paw Paw to effect the release of her husband from county jail; but we couldn't do so, as draft was payable to Ingraham's order; and after Ingraham was released from jail he informed me that he had obtained the money on it and left here to go to Toledo.

In the summer of 1876, about the last of October, he told me the suit was again postponed, but that they had taken his testimony there in Cleveland. I asked him how his testimony so given agreed with his former testimony, and if it did not conflict, so as to get him into trouble. He said no, as he had had his former testimony read to him before he gave in his last testimony on last occasion, and that his second testimony was the same as given before. He said the suit would come on this winter, and "I may want you to write some more letters for me. I have already got $100 out of them, and I won't go when they want me unless they pay me more in the way of another hundred dollars."
124 Q. 5. Where were these letters that you speak of written?

A. In my office, in the village of South Haven, Michigan. I was justice of the peace for the time and had an office for the transaction of such business.

Q. 6. Where did the last conversation you speak of, in which he told you that he had received one hundred dollars from the Osborn folks and that he would not go unless he got another hundred dollars, take place?

A. It was on the street, on Main street, coming down town from his and my house. We both live in same neighborhood. He asked my opinion, and I gave him but little in the way of an answer. He always gave me to understand that he wished to make money out of it, and for me to so frame his letters as to avoid any criminal liability for him.

WILLIAM P. BRYAN.

STATE OF MICHIGAN,
County of Van Buren:

I, O. N. Hilton, a notary public in and for said county, do hereby certify that William P. Bryan was by me first duly sworn to testify the truth, the whole truth and nothing but the truth, and that the deposition by him subscribed as above set forth was reduced to writing by myself in the presence of the witness, and was subscribed by said witness in my presence, and was taken at the time and place in
125 the annexed notice specified. I further certify than I am not counsel, attorney, or relative of either party or otherwise interested in the event of this suit.

In testimony whereof I hereunto set my hand and official seal this 3rd day of March, A. D. 1877.

[SEAL.] ORRIN N. HILTON,
Notary Public in and for Van Buren County, Mich.

STATE OF MICHIGAN,
County of Van Buren, ss:

I, Henry S. Williams, clerk of said county of Van Buren, and of the circuit court therein, being a court of record having a seal, do hereby certify that Orrin N. Hilton, whose name is subscribed to the annexed affidavit and therein written, was, at the time of taking such affidavit, a notary public in and for said county, duly commissioned and qualified and duly authorized by law to take the same; and further, that I am well acquainted with the handwriting of such notary public and verily believe that the signature to the said affidavit is genuine, and as such entitled to full faith and credit.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court, at my office in the village of Paw Paw, in said county, this 2nd day of March, A. D. 1877.

[SEAL.] HENRY S. WILLIAMS, *Clerk.*

126 UNITED STATES OF AMERICA,
Northern District of Ohio, City of Cleveland,
County of Cuyahoga and State of Ohio:

Be it remembered that on the thirteenth day of June, A. D. 1874, I, L. M. Schwan, a commissioner duly appointed by the circuit court of the United States for the northern district of Ohio, in the sixth circuit, under and by virtue of the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and

the act of Congress entitled "An act in addition to an act entitled 'Act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me at my office in the city of Cleveland, in the said northern district of Ohio, in the State aforesaid, Robert F. Parsons, to testify and the truth to say on the part and behalf of the libellants, in a certain suit or matter of controversy now depending and undetermined in the district court of the United States for the northern district of Ohio, wherein W. G. Winslow et al. are libellants and the schooner S. S. Osborn respondents.

And the said ROBERT F. PARSONS being about the age of 36 years, and having been by me first cautioned and sworn to testify the
127 truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Robert F. Parsons, and he did thereupon depose, testify, and say as follows:

Q. 1. State your name, age, residence, and occupation.

A. My name is Robert F. Parsons; age, 36 years; Modoc City, Pa., residence; and am in the oil business.

Q. 2. State whether you have ever been a sailor; and, if so, for how long and in what capacities.

A. I have been a sailor; I sailed 18 years in all capacities but cook.

Q. 3. Have you been master; and, if so, for how long?

A. I have been master for ten years, from 1862 to 1873.

Q. 4. When did you stop sailing?

A. In October, 1872.

Q. 4. On what vessel were you sailing in August, 1872, and in what capacity?

A. The schooner American Union, as captain.

Q. 5. Do you remember the occasion of the collision off Beaver Islands of the American Union and the schooner Osborn?

A. Yes, sir.

Q. 6. State fully on what voyage the American Union was bound, and all the circumstances of the collision.

A. The American Union left Cleveland on that trip Monday, August 5, 1872, bound for Escanaba light; Friday, Aug. 9, encountered at noon a heavy wind from the southwest, and having reached Sand Bay, Beaver Island, east side, and went to an anchor, wind shifted from SW. to NNW. at half past 9 o'clock p. m. of same day, with squall and rain; hove up anchor and left for Escan'ba abreast of Beaver Island
128 light-house at 11¼ o'clock p. m. same night; hauled the Union at this time by the wind, her sheets flat aft; I told the man at the wheel to keep her full and by, which was done; she would head due west close to the wind on the starboard tack; when we opened up the island and put her by the wind the wind was NW. by N. and the vessel would sail within five points of the wind; at 12 o'clock, midnight, not feeling well, I asked my first mate to stop on deck for me an hour; it was the second mate's watch; I went below at 12 o'clock, midnight, leaving both mates on deck; I laid down with boots and clothes all on, and had been lying down about ten minutes, not having been asleep, when the first mate came to my door and called me on deck; said there was a vessel steering for us; I immediately went on deck; I looked as he pointed under our main boom, and saw a green light about two points on our lee or port bow; I could not luff up, as we were jam on the wind, and could not keep off, because I would have to run across

the other vessel's course, crossing her bows; I therefore kept her steady on the wind; I saw the approaching vessel very near to us, and I sent my mate forward to sing out to her to keep away; he immediately did so; I stood aft watching the movements of the other vessel, expecting to see her keep away; a few seconds before she struck I noticed the Osborn luff up across our bows; this was immediately after the mate sung out; the mate sung out "keep away;" the Osborn struck us
129 in the lee or port bow, from 15 to 20 feet from our *our* stem, crushing in the frame, planks, &c. It tore away the Osborn's head gear and took foremast out of her, &c. We lapped alongside, our stern to his head, port sides together; we lashed the vessels together. The Osborn took in all her canvas, and the Union kept her foresail, mainsail, and two jibs set. Shortly after the collision we took in our mizzen and a jib. In this way we drifted to the leeward of the Foxes, and our canvas caused our vessel to headreach, so that we were lying in the troughs of the sea drifting and headreaching at the same time. After the vessels were made fast together, just after the collision, our wheel was lashed hard down or aport, and left in that position during the balance of the night. While we were drifting and headreaching during the night our vessel was heading due SW., as I looked at the compas' frequently during the night, having the vessels in my charge. Immediately after the collision I sung out to know what vessel it was, and I got no answer. I again sung out, and shortly after got a reply that it was the Osborn. I then called the captain by name, as I know him. I told him he better get aboard the Union. He replied, "Christ, I have got a cabin full of women." We went to work and got them aboard the Union.

Q. 7. From 11¼ o'clock p. m. that night till the collision where was the wind, and what changes were there, if any, in it?

130 A. There was no change in the wind during the time mentioned; it was NW. by N.

Q. 8. During the same time, what change, if any, was there in the course of the American Union?

A. No change; steady by the wind all the time.

Q. 9. During the same time, where were your lights placed, and in what condition were they?

A. Placed forward of the mizzen rigging in the screens on the main rail, outside the monkey-rail.

Q. 10. In your opinion, was or was not this a proper place for them?

A. In my opinion it was; in that position they could be seen dead ahead.

Q. 11. In the position in which the lights were, how far and in what direction could they be seen?

A. They could be seen from dead ahead to two points abaft the beam, and in good night for seeing lights they could be seen six miles. They were just as good lights as could be manufactured.

Q. 12. In answer to question 9 you omitted to state in what condition your lights were at the time of the collision. Please state now.

A. They were burning good. I looked at them when I came on deck.

Q. 13. How long after you came on deck did the collision occur?

A. From three to five minutes.

Q. 14. What canvas did you have set at the time of and for an hour prior to the collision?

A. Had foresail, mainsail, mizzensail, and three jibs set.

Q. 15. When was the mizzen and the jib taken in?

131 A. Within two minutes after the collision. The first order I gave after the collision was to lower away the mizzen.

Q. 16. At time of the collision, what kind of night was it for seeing lights?

A. It was good, and had been for half an hour or more.

Q. 17. How far could a vessel's sails be seen at the time of and for half an hour before the collision?

A. From a mile to a mile and a half. I saw the canvas of the Osborn shortly after I came on deck.

Q. 18. Did you hear anything said by any of the crew of the Osborn at the time they got aboard the Union; if so, what was it?

A. Yes, sir. I heard the fellow that got up in our mizzen rigging say that the collision all came from their not having any lookout.

Q. 19. Do you know the age young Seamen, mate of the Osborn?

A. I only know what Captain Seamen told me.

Q. 20. What did he tell you? State fully.

A. He told me at the time of the collision that his son was 19 years old, and that he was sorry the collision occurred in his watch. He said his son had sailed three years. He said he had had a good mate two trips previous to this, and that he couldn't get another mate, so he took his son as mate.

Q. 21. How do you account for the Osborn's main boom falling across her cabin?

A. When she came under the lee of our sails his boom swung amidships, and when her foremast was carried away her stays slackened up and her mainmast sprung aft, letting her boom down; or, he had
132 made so much leeway in coming across that he had been compelled to haul up to the wind. Either explanation would account for it if it be true. I should judge by the way she was heading that the latter explanation is the true one, as she was heading away above her course.

Q. 22. How was the Osborn heading?

A. I should judge she was heading about NE.

Q. 23. What is the course by chart across from Beaver Island to Poverty Passage?

A. W. ½ S.

Q. 24. How much, if any, faster will a loaded vessel sail with a free wind than close-hauled?

A. Generally about a third.

Q. 25. Is it a common or uncommon thing for a vessel coming across from Poverty Passage to the Beaver, with wind and sea anywhere from the northward, to make leeway?

A. It is a quite common thing.

Q. 26. If a vessel in coming across there should make Fox light on the night of the collision, what would that indicate in reference to her having made leeway?

A. It would indicate that.

Q. 27. There are witnesses testifying to a conversation which they say occurred between Captain Seamens and you after the collision, on the deck of the Osborn, in respect to the north star and their perm'ant, &c. State just what that conversation was.

A. Capt. Seamens and I differed. He referred to the compass.
133 The vessel (Seamens') was heading to northeast. The wind was blowing right abeam, or very nearly so, and our fly was blowing right across his decks. The conversation between us was in regard to the wind. He said, pointing to the north star, "There is a fellow that

don't lie," and claiming that the wind was blowing from about the direction of that star. I did not contradict him.

Q. 28. What is the bearing by compass of the north star from the place where you then were?

A. NNW.

Q. 29. What conversation occurred between you and Capt. Seamens in respect to your lights?

A. I called his attention to my lights and asked him if they were not good lights and burning good, and he replied that they were.

Q. 30. Did Captain Seamens, at any time, show you the way his sheets lay, and say that you could see that they were close aft and as sharp on the wind as they could be and keep his course; and you reply that you saw his green light some time before you struck him, but could not see any other light?

A. No, sir; I remember no such conversation in regard to the sheets. The next day after the collision we had a conversation in respect to his main boom, and he said that was where his boom dropped. That was all that was said.

Adjourned till 2 o'clock p. m.

Q. 31. Have you given all the conversations that have taken place between you and Captain Seamens in respect to the collision?

134 A. No, sir; I had one other conversation with him the *the* day after the collision, while we were towing. He said Wilcox had already lost $14,000.00 by the wreck of the Osborn on Lake Erie several years before, and that it would come hard on him to pay for this damage. These are the only conversations that I had with Capt. Seamens about the collision. Seamens did most of the talking. I talked very little.

R. F. PARSONS.

No cross-examination.—COMMISSIONER.

UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

I, L. Manuel Schwan, a commissioner duly appointed by the circuit court of the United States for the sixth circuit and northern district of Ohio, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes pending in the courts of the United States," passed February 20th, 1812; and the act of Congress entitled "An act in addition to an act entitled an act for the more convenient taking of affidavits and bail in civil causes pending in the courts of the United States," passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the testimony of Robert F. Parsons is material and necessary in the cause the title whereof is in the caption of said deposition named
135 and pending in the district court of the United States for the northern district of Ohio.

I further certify that the above deposition was taken by the consent of parties hereto. I further certify that on the thirteenth day of June, in the year of our Lord one thousand eight hundred and seventy-four, I was attended by H. L. Terrell, esq., for libellants and by the witness aforesaid, who was of sound mind and lawful age; and the witness was by me first carefully examined and cautioned and sworn to testify the

truth, the whole truth, and nothing but the truth, and his deposition by me reduced to writing in the presence of the witness aforesaid and from his own statements, and after carefully reading the same to the witness he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of sealing up and directing the same with my own hand to the court for which the same was taken; and I certify that the same will be retained by me until I shall deposit the same with my own hand, sealed up and directed as aforesaid, in the post-office at Cleveland, Ohio, the place where the said deposition was taken; and I do further certify that I am not of counsel or attorney for either of the parties in said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof I have hereunto set my hand this 15th day of June, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States of
136 America the ninety-eight'.

L. M. SCHWAN,

U. S. Commissioner, duly appointed by the Circuit Court of the United States for the Sixth Circuit and Northern District of Ohio.

United States district court, northern district of Ohio, in admiralty.

WILLIAM G. WINSLOW ET AL.
vs.
THE SCHOONER S. S. OSBORN.

Depositions taken by consent in above case at the office of Prentice and Varce and at the time hereinafter certified to.

Henry L. Terrell present on behalf of libellants.
Prentiss & Varce " " " " respondents.

PETER LEIB, of lawful age, being by me first duly sworn, deposes and says:

Q. 1. State your name, age, occupation, and place of residence.

A. My name is Peter Leib; age, 29 years; am a sailor; have no settled place of residence; have been sailing 13 years; have sailed before the mast and as 2nd mate.

Q. 2. Where and in what capacity were you employed during the month of August last?

A. I was employed on the schooner Osborn by Captain Seamens; was before the mast.

137 Q. 3. Where was the schooner Osborn and on what voyage, on or about the 9th day of August last, at the time of the collision with the schooner American Union?

A. She was on the passage from Escanaba to Erie. We had Beaver light in sight from about 11 o'clock to the time of the collision. We were steering east by north half north, and had the light about a point on our weather bow. I can't tell exactly how far we were from the light. We had sailed about ¾ of an hour after we saw the light before the collision.

Q. 4. What was the direction of the wind from 8 o'clock that night to the time of the collision, and what tacks had you aboard during that time?

A. The wind was to the eastward of north, steady. We had port tacks aboard.

Q. 5. What part of the time from eight o'clock to the time of the collision were you on deck, and what were you doing?

A. The first two hours (from eight to ten o'clock) I was forward keeping lookout, and from ten to twelve I was at the wheel. I was not on the gallant forecastle, but on the main deck from 8 to 10.

Q. 6. What passage did the Osborn go through in coming from Green Bay, and what was the course of the vessel from the passage to the time of the collision?

A. I am not sure, but I think it was Rock Island. I am not acquainted with the passage. I was not at the wheel at that time and cannot tell. She headed east by north half north while I was at the wheel; her sheets flat aft; all hands were called up to haul aft the sheets at about seven o'clock. The sheets were flat aft up to the time of the col-
138 lision, and the wind steady. We were sailing by the wind.

Q. 7. What lights had you aboard and what condition were they in?

A. We had a red and a green one. We had the green light on the starboard bow, and the red one on the port. They were in good condition.

Q. 8. Who were on deck from eight to ten o'clock that evening on the Osborn, and what was the duty and position of each one on deck?

A. Peter Bondy was on the gallant forecastle keeping lookout. Jim, whose sirname I don't remember, and myself were on the deck, and also the mate. Jim was at the wheel at that time. I was mistaken in saying that Jim was on deck.

Q. 9. Who were on deck and in what positions from 10 o'clock to the time of the collision?

A. I was at the wheel from 10 to 12. Peter Bondy was on the lookout. Jim and the mate were on deck. The captain was on deck from eight o'clock to the time we made the Beaver light; when we made the light we went below. The capt. first saw Beaver light.

Q. 10. What was the character of the night?

A. It was dark and cloudy from a little after 7 o'clock to about half-past 12.

Q. 11. At what time did the collision occur?

A. I don't know exactly what time; it was close on to 12 o'clock.

Q. 12. Had the 8 o'clock watch been changed at the time of the collision?

A. The new watch had not yet been called.

139 Q. 13. Who first saw the American Union just before the collision, and how near was she to your vessel before you saw her?

A. I didn't see her until her jib-boom pointed across our bow. I don't know who saw her first. I' was the mate or one of the men forward. The mate was singing out "hard up," and h'd hardly got the words out of his mouth before he sung out "hard down."

Q. 14. What light, if any, did you see on the American Union prior to the collision?

A. I didn't see no light.

Q. 15. What lights, if any, had the American Union forward?

A. She had no lights forward; they were somewhere about the mizzen rigging.

Q. 16. Suppose the American Union had carried lights on her 'night-heads forward, the same as the Osborn, how far could you have seen

them from the position occupied by you, at the wheel, had she approached head on or substantially so?

A. Yes, sir; I could have seen them then and for 20 minutes or half an hour before she could come into us.

Q. 17. Please state the bearings of the vessels to each other at the time of the collision, and all that you know in reference to the collision which you have not already stated.

A. She struck us on our starboard bow. She was going right across our bow. She took our bowsprit away. She took the whole lot away; our jib-boom; damaged our bow and forecastle; our anchor went overboard with about seven or eight fathoms of chain; the windlass
140 was rolled over against our scuttle-door, so the watch couldn't get out; took the forecastle out of her; square sail-yard broke; stays and ropes gone to pieces; the mainmast settled aft, letting the boom, so soon as the foremast fell, lay over on the cabin, and it laid there till this morning. It was about two feet towards midships from the corner of the cabin; the mizzen boom fell and landed on the skylight close to the wheel, about a foot from midships; the sheets were chock off the blocks. The sheets of the main and mizzen boom remained the same as before the collision, but in falling they would be a little further out.

Q. 18. After the collision did the bowsprit and jib-boom of the American Union rest over the deck of Osborn; and, if so, on what part of the deck, and what was the bearing of the jib-boom of the Union in reference to the sides of the Osborn?

A. Her jib-boom and bowsprit passed across the bowsprit of the Osborn just before the collision. At the time her jib-boom was pointing across our bowsprit she had a good headway on, and the American Union's anchor was catching on our stay, and that made her turn on our side; after the collision she lay on our port side. I was not forward at the time.

Q. 19. What damage, if any, was done to the port bow of the Osborn?

A. It took a rail out, some of the bulwarks, bow, and cat-head.

Q. 20. What became of the vessels after the collision?

141 A. They were alongside of each other; we tied them together; put the ladies on board the American Union. They drifted before the wind. I saw a little propeller at the dock at South Fox Island. We were about four miles off when we were nearest to her.

Q. 21. What schooner, or vessel, if any, did you see pass you immediately after the collision?

A. It was not right after the collision, about an hour after; she was so close that we could see her lights but not her sails; she was going up.

Adjourned to Sept. 21, at 10 o'clock a. m.

Sept. 21, met pursuant to adjournment.

Q. 22. What was the comparative injury of the port bow of the Osborn as compared with the injury to the starboard bow?

A. The port bow was injured the most. I don't know exactly how the vessels got into each other, because I could not see that plainly from the wheel.

Q. 23. Did you hear a conversation between Captain Seamens and Captain Parsons, immediately after the collision, in reference to the direction of the wind? And, if so, please state where they was standing at that time and what the conversation was.

A. Yes, sir; our captain called the captain of the American Union aft and showed him the compass and the fly, and showed him how the

wind was. He said "Look at the fly and look at the compass, and that will tell you how the wind is." Captain Parsons made no reply.

Q. 24. What, if anything, did Captain Seamens say in reference to the direction in which the wind was?

A. I didn't hear anything about it.

142 Cross-examination:

Q. 25. What time did you get through Rock Island passage that night?

A. I don't know exactly what time it was; about 5 to 6 o'clock.

Q. 26. Whereabout did the collision occur?

A. I don't know exactly how far we were from Beaver light; we had it in sight; we saw that all the time.

Q. 27. Did you say that you hauled your sheets flat aft at about seven o'clock?

A. Yes, sir.

Q. 28. Were they flat aft from that time until the time of the collision?

A. Yes, sir; we never touched them after we hauled them flat aft.

Q. 29. Where did you say the wind was from 7 till 12?

A. From 8 to 12 our watch was on deck, and it was eastward of north, steady.

Q. 30. How much to the eastward of north?

A. Towards a point north by east, something like that.

Q. 31. Did you say that you were at the wheel from 10 o'clock to the time of the collision?

A. Yes, sir.

Q. 32. During that time you say you were steering a course east by north half north?

A. No, sir; from ten o'clock till the time we made Beaver light we were steering east by north, and from that time on till the collision east by north half north.

Q. 33. Were you, at any time, sailing by the wind?

A. Yes; we were sailing by the wind, good full sail. I don't
143 know how long we were sailing by the wind, but think from 8 to 12 o'clock.

Q. 34. Do vessels steer a course when they are sailing by the wind?

A. Yes; we were steering a course; sometimes they do; sometimes steer a course with sheets flat aft.

Q. 35. When you went to the wheel at 10 o'clock were your orders to keep her by the wind or to steer her on a course east by north?

A. East by north, I got.

Q. 36. When you changed her course at the time you made the Beaver Island light, were your orders then to keep her by the wind, or to give her a course east by north half north?

A. The captain he said, "Let her come up to east by north half north, and I think she will lay that."

Q. 37. How close to the wind will the Osborn lay?

A. I suppose she will lay about five points.

Q. 38. What is the course by compass from Rock Island passage past Beaver Island for a vessel sailing down?

A. That is more than I can tell. I ain't no pilot on those waters.

Q. 39. Can a vessel sail with her sails flat aft and at the same time have the wind two points or 3 points abaft the beam?

A. I never see it that way; that is more than I can tell.

Q. 40. Who was in charge of the watch from 8 to 12?

A. The mate, William Seamens, son of the captain.

Q. 41. How much of a breeze from 8 o'clock on till the time of the collision?

A. We had a good breeze.

Q. 42. You say you were at the wheel at the time of the collision?

144 A. Yes, sir.

Q. 43. Where was the mate at the time of the collision?

A. I was at the wheel and could not see where the mate was, but a little before the collision he was singing out to me.

Q. 44. Did you see him when he sung out to you?

A. No; but I heard his voice from the main deck.

Q. 45. Where was the lookout at the time of the collision?

A. I can't say anything about the lookout. I was at the wheel, you must ask the man himself about that.

Q. 46. Was he at his post on the forecastle?

A. I was at the wheel.

Q. 47. Was he not aft by the cabin, or in the cabin?

A. No; but after she struck us he came running aft.

Q. 48. Who did you say first saw the American Union?

A. I can't tell exactly who saw her first, but the mate sung out to me to put my helm hard up.

Q. 49. Did you not say, in your examination-in-chief, that you could not tell whether it was the mate or the man that saw her first and sung out to you?

A. I must have said it.

Q. 50. Did you hear any one on board the American Union hail your vessel just before the collision?

A. No; I didn't hear nothing.

Q. 51. How was the Osborn heading at the time the vessels struck?

A. She was heading east by north half north.

Q. 52. At what angle did the American Union cross her bows?

A. I couldn't see it plain from aft.

Q. 53. You say that you saw the bowsprit and jib boom of the

145 American Union cross your jib boom just before the vessels struck. At what angle did the jib booms cross?

A. That's a thing I can't say for certain. I couldn't see plainly from the wheel, except to see her jib-boom point across ours.

Q. 54. Did you not say in your examination-in-chief that the American Union bore right across your bows?

A. I said the way that I could see from the wheel she went across our bows.

Q. 55. Did you see the lights of the American Union after the collision?

A. Yes, sir; when she was alongside of us. I noticed it about 15 minutes after she came alongside of us. It was her red light.

Q. 56. Was it a good light?

A. No, sir. It wasn't a particle as good light as that we got on our ship.

Q. 57. If it had been placed in a proper position it might have been seen a few rods, I suppose?

A. I don't know how far I could see them. I could hardly see them from our poop.

Q. 58. What injury was done to your starboard bow?

A. I can't recollect.

Q. 59. Since your examination yesterday have you had any conversation with Captain Seamens or Mr. Prentiss as to how the vessels came together, or as to which of your bows was injured most?

A. No, sir; not with Captain Seamens. But I did with Mr. Prentiss.

He asked me which bow was damaged the most, and I said the port bow. That was all he asked me.

Q. 60. Did you climb up into the mizzen rigging of the American Union just after the collision?

146 A. No, sir.

Q. 61. How much of a sea was there on the night of the collision?

A. There was quite a little sea on; a kind of swell.

Q. 62. Which way was it making?

A. That's a thing I can't tell. I never noticed it.

Q. 63. Was it a beam sea?

A. I never noticed the sea. From the time I was walking forward once and awhile there came a little spray forward.

Q. 64. When you brought your vessel up east by north half north was she as close to the wind as she could lie?

A. I suppose she would lay about half a point higher.

Q. 65. Who was at the wheel from 8 to 10?

A. A man by the name of Jim.

Q. 66. You say that after the collision Captain Seamens took Captain Parsons aft and showed the compass and fly. Where were you at the time?

A. I was aft on the poop at the time.

Q. 67. How long was this after the collision?

A. About 10 or 15 minutes after.

Q. 68. Have you not already sworn that for 15 minutes after the collision you were at the pumps?

A. Well, we were at the pumps every five minutes trying it. That's more than I know.

Q. 69. Did Captain Seamens and Captain Parsons go into the cabin when they went aft, as stated?

A. I was aft at the time; I don't know.

Q. 70. Where was the compass?

A. There was one in the binnacle, and there was one down on the table.

Q. 71. Which compas' did the captains go to?

147 A. The one in the binnacle.

Q. 72. Did the captains both go up and look at the compass in the binnacle?

A. Yes, sir; both went aft. They both looked at it.

Q. 73. Who else was aft at the time?

A. All I know is I worked aft of the boat's tackle-falls.

Q. 74. Were you facing the binnacle?

A. No; I wasn't facing the binnacle, but I heard the conversation.

Q. 75. Then you didn't see the captains, but merely heard the conversation?

A. Yes, sir; I seen both of them standing there.

Q. 76. When did you see them, before or after the conversation, standing there?

A. I see at the same time they had the conversation.

Q. 77. Did you leave your work to turn round and look at them?

A. I looked at them at the time they commenced their conversation, and then went at my work.

Q. 78. Where were they standing at the time you looked at them?

A. Before the binnacle, looking at the compass in the binnacle.

Q. 79. Did you turn around and look at them after that?

A. No, sir. I walked forward; walked down on the main deck again.

Q. 80. How, then, do you know that Captain Seamans showed Captain Parsons the fly?

A. He showed that to him before I walked away from there.

Q. 81. Was there a light in her binnacle at that time?

148 A. That's what I didn't notice. I didn't notice that there was a light in the binnacle.

Q. 82. Don't you know that the light had been taken out of the binnacle at that time?

A. No; I don't know. We had no use for that light on deck. We couldn't use it for nothing.

Q. 83. Didn't the women have it in the cabin?

A. I don't know anything about that light.

Q. 84. If it had been in the binnacle at the time you saw the captain standing there, could you not have seen it?

A. I could see it if I had just thought about the lights.

Q. 85. What vessel were you on before you were on the Osborn?

A. I was on the William O. Brown, owned in Chicago by Dolgle.

Q. 86. Where did you winter last winter?

A. I went down to Philadelphia, and made a trip out to the West Indias.

Redirect:

Q. 87. Did you hear any conversation between the captains as to the drifting of the vessels after the collision; and, if so, what was it?

A. No, sir.

PETER LIEB.

Adjourned till Monday, September 23rd, at 10 a. m. Cleveland, September 21st, 1872.

Met Monday, September 23rd, 1872, at 10 a. m., and adjourned till 2 p. m. same day.

H. L. Terrell appearing for libellants.
L. Prentiss " " respondents.

149 JAMES O'NEILL, being first by me duly sworn, deposeth and saith as follows:

Q. 1. State your name, age, occupation, and place of residence.

A. My name is James O'Neill; age, about 25 or 26 years; occupation, sailor. I live here in Cleveland now. I was employed on the schooner S. S. Osborn during the month of August last; was before the mast.

Q. 2. Were you on the Osborn at the time of the collision with the American Union? If so, please state what you know in reference to the collision.

A. I was on the Osborn at the time of the collision. The first time I see the American Union she was right ahead, close to. I was standing at the pump then. I see she was that close that I could see there was no way of clearing her, but it was safer for me to run aft. I did not get way aft before they struck. I commenced to lower the boat down. When I came midships again she was alongside. We had to get the women and their trunks aboard the American Union. We went forward from there to get the men out of the forecastle. She struck the port bow. Both port bows came together. The Union was right head, coming right straight on. The foremast of the Osborn fell aft;

the fore boom fell on deck; the main boom fell on the cabin. The fore boom fell midships on deck, between the rail and the timberhead that was holding it, about half way. The main boom fell as far to leeward as it could get for the sheet. I couldn't say how far from the rail, but about six feet from the starboard side of the cabin. The fore boom also went off as far as the sheets would let it. The fore
150 boom and the main boom remained fastened as they were from about half-past seven till the time of the collision.

Q. 3. About how far were you from Beaver Island light at the time of the collision, and in what direction was the light from your vessel?

A. I don't know, sir; I am not much acquainted about there. I couldn't say exactly how long we had the light in sight at the time of the collision.

Q. 4. How much of the time were you on deck that night, and how was your vessel sailing from 8 o'clock up to the time of the collision with reference to the wind?

A. I was on deck all night, from 8 o'clock. From 8 to 10 I was steering east by north. I was at the wheel during that time. I gave that course to the man that relieved me. We were sailing by the wind; sails good full going along our course. That is all I know about it, sir. I left the wheel at 10 o'clock.

Q. 5. What tacks had you aboard from 8 o'clock to the time of the collision?

A. Port tacks.

Q. 6. How were your sheets from 8 o'clock to the time of the collision?

A. The sheets were flat aft. The sheets were hauled flat aft sometime during the dog-watch, between 6 and 8. I saw no change in the sheets from that time on till the collision. I was on deck all the while, and could have seen if there had been any change

Q. 7. Did the vessel continue to sail by the wind from the time the sheets were hauled flat aft till the time of the collision?

151 A. She was going along her course by the wind up to the time of the collision.

Q. 8. What was the direction of the wind that night from 8 o'clock to the time of the collision?

A. North by east.

Q. 9. What were you doing from 10 o'clock on to the time of the collision?

A. I travelled about the deck pretty much all the time.

Q. 10. What were you doing—which way were you facing just before the collision?

A. Just before the collision I was standing at the pump. I was facing aft.

Q. 11. Where was the mate at that time?

A. He was on the port side of the pump-handle. He was facing forward.

Q. 12. Who first gave the alarm or spoke the approaching of the American Union?

A. I don't know. I guess it was the master's voice I heard first—I guess it was. I ain't sure.

Q. 13. Who else, if any, was at the pumps just before the collision?

A. Peter Bondy. I don't know which way he was facing, I am sure.

Q. 14. How long was he at the pump before the collision?

A. I could not say how long. I guess about three or four minutes.

Q. 15. What lights, if any, did you see on the American Union just before the collision?

A. I saw none.

Q. 16. If the American Union had had her lights upon her bow the the same as on the Osborn, how far could you have seen them that night, supposing she had been approaching you dead ahead or nearly so?

152 A. I don't know exactly how far; we could have seen them 15 minutes before we came aft to the pumps.

Q. 17. How long have you sailed, and in what capacity; and how fast was your vessel going that night?

A. I have sailed 8 years; six years before the mast, one year as boy, and one year as ordinary seaman. I don't know how fast the vessel was going that night.

Q. 18. How long did the vessels remain lashed together after the collision, and how near did they go to a propeller lying at the dock at the southerly end of Fox Island?

A. I don't know how long the vessels remained lashed together. I could not say how near to the propeller we went; but, as near as I can guess, about 3 or 4 miles. They remained lashed together till some time next morning.

Cross-examination:

Q. 19. What time did the Osborn get through the Rock Island passage that evening?

A. I don't know what time she did. I don't know what passage she did go through.

Q. 20. Did you say that the course given to you when you went to the wheel was east by north?

A. Yes, sir.

Q. 21. Did the wind continue steady in the same direction from 8 to 12?

A. Yes, sir; as near as I can go.

Q. 22. Could the Osborn, between 8 and 10, lay any closer to the wind than she did?

153 A. I guess she could about half a point or a $\frac{1}{4}$—$\frac{1}{2}$ a point I'll say; but the gaff-topsail would lift at that.

Q. 23. What time did the collision occur?

A. By our time, about 10 minutes to 12; don't know exactly.

Q. 24. Was the American Union crossing your course from your lee side at the time of the collision?

A. When I seen her she was right ahead, a little on the lee bow, not much.

Q. 25. Do you mean to say that the vessels approached each other stem on?

A. Well, pretty near, I guess; I can't say exactly.

Q. 26. Was your starboard bow injured any?

A. Yes, it was. It was torn out a little; the bowsprit was torn out a little.

Q. 27. Did you say you were walking around decks most of the time from 10 to the collision?

A. Yes, pretty much all the time.

Q. 28. Where were you the balance of the time?

A. I was once down in the forecastle lighting my pipe; I was not in the cabin.

Q. 29. Whereabouts on ship was your pump?

A. Abaft the mainmast.

Q. 30. When you and the mate were standing there just before the collision, which was the further forward, you or he?

A. Both alike. I was standing right opposite him; the pump was between us.

Q. 31. How far apart were you?

A. Couldn't say exactly. It might be 4 or 5 feet.

Q. 32. How far aft the mainmast is the pump?

A. I can't say; about 25 feet, I guess.

Q. 33. How long is your main boom?

A. In the neighborhood of 80 feet.

Q. 34. What is the distance between the foremast and the mainmast?

154 A. A little over 60 feet.

Q. 35. How far from her stern to her foremast?

A. I don't know; about 20 feet, I should think.

Q. 36. Whereabouts, with reference to you and the mate, did Peter Bondy stand?

A. He was standing on the weather side of the pump.

Q. 37. What was Bondy's post from 10 to the time of the collision?

A. Lookout.

Q. 38. What were you doing at the pumps just before the collision?

A. Pumping her out the best way we could.

Q. 39. Who was manning the breaks?

A. I and the mate.

Q. 40. How long had you been there at the pump before the collision?

A. Between 3 or 4 minutes, I guess.

Q. 41. Who was on deck at the time of the collision besides the mate, lookout man at the wheel, and yourself?

A. That was all.

Q. 42. What was the lookout doing aft by the pumps?

A. He just come there to give us a hand.

Q. 43. Which side of the pump was the mate, did you say?

A. The port side.

Q. 44. Did you climb up into the mizzen rigging of the American Union shortly after the collision?

A. No, sir.

Q. 45. Did you see any of your men climb up there?

A. No, sir.

Q. 46. After the collision, while the vessels were alongside, did you see how the sails of the American Union were trimmed?

155 A. Took no notice, only I saw the mizzen lowered down. I do not mean to say I saw it when it was being lowered down, but after it was lowered I saw a reef in her mainsail, too.

Q. 47. If you noticed the mainsail closely enough to know that there was a reef in it, why can't you tell whether it was hauled aft or not?

A. Because I took no notice of the trimming of the sails at all. When I see a reef in a sail I know it.

Q. 48. The port sides of the vessels lay together, did they not?

A. They were.

Q. 49. Did the booms of the American Union extend out over your rail and deck?

A. I took no notice.

Q. 50. Did you discover that the Union's mainsail had a reef in it while you were on your own deck?

A. Yes, sir; I wasn't aboard of her.

Q. 51. Do you say that the American Union's mizzen was lowered before you got the women aboard of her?

A. I don't know; I took no notice.

Q. 52. Did you see the lights of the American Union after the collision?

A. Yes, sir; I saw a red light. It was a small-looking light to me. I guess it was smaller than the Osborn's.

Q. 53. Where have you been since the Osborn came here for repairs?

A. I have been in Cleveland here. I've been living aboard-ship since.

Q. 54. Do you swear that on the night of the collision when you came on deck at 8 o'clock the sails of the Osborn were hauled flat aft?

A. Yes, sir; they were flat aft before I came on deck.

Q. 55. How much of a breeze was there that night?

156 A. It was a nice breeze.

Q. 56. Which way was the sea making that night?

A. We had a head sea; there might have been a stern sea at the same time, but I don't know anything about it. I know that the sea was coming over forward and wetting me, and that's all I know about it.

Redirect:

Q. 57. What kind of a night was it from eight till after the collision?

A. It was a cloudy night; the clouds broke away between one and two o'clock.

Q. 58. Do you mean to be understood that you noticed any stern sea?

A. I didn't notice any.

Q. 59. How soon after the collision did you notice that the mizzen sail of the American Union was down?

A. I don't notice when it was lowered down. I can't tell exactly. As soon as I went forward I noticed that it was down.

JAMES O'NEILL.

THE STATE OF OHIO,
Cuyahoga County, ss:

I, George D. Hinsdale, a notary public in and for the county aforesaid, duly commissioned and qualified, do hereby certify that the above-named Peter Lieb and James O'Neill were by me first severally sworn to testify the truth, the whole truth, and nothing but the truth, and that the depositions by them respectively subscribed, as above

157 set forth, were reduced to writing by Geo. D. Hinsdale, he being a proper person, and not interested in the suit, in my presence, and in the presence of the witnesses respectively, and were subscribed by the said witnesses in my presence, and were taken at the time and place in the annexed notice specified, and continued from day to day, as above set forth.

I do further certify that I am not council, attorney, or relative of either parties, or otherwise interested in the event of this suit.

In witness whereof I have hereunto set my hand and seal of office this 24th day of September, A. D. 1872.

[SEAL.] GEORGE D. HINSDALE,
Notary Public.

In the district court of the United States within and for the northern district of Ohio.

THE STATE OF OHIO,
Cuyahoga County, ss:

WILLIAM G. WINSLOW AND HEZEKIAH J. Winslow, plaintiff',
vs.
THE SCHOONER S. S. OSBORN, B. O. WILCOX, claimant, defendant.

The said libellants will take notice that on Tuesday, the 3rd day of December, A. D. 1872, the above-named defendant will take the
158 deposition of sundry witnesses, to be used as evidence on the trial of the above-entitled cause, at the office of Messrs. Rae and Mitchell, in room No. 63 in Central Union block, in the city of Chicago, county of Cook and State of Illinois, between the hours of 8 o'clock a. m. and six o'clock p. m. of said day, and that the taking of the same will be adjourned from day to day between the same hours until they are completed.

PRENTISS AND VARCE,
Attorneys for Defendant.

We acknowledge service of the above notice, by copy, this 29th day of November, 1872.

WILLEY, CARY AND TERRELL,
Attorneys for Libellants.

Caption.

Depositions taken before me, J. L. Bennett, a notary public within and for the county of Cook, in the State of Illinois, pursuant to the annexed notice, at the time and place therein specified, to be read in evidence on behalf of the claimant in an action pending in the district court of the United States in and for the northern district of Ohio, in which William G. Winslow and Hezekiah J. Winslow are libellants, and the schooner S. S. Osborn (B. O. Wilcox, claimant) defendant. Present, John E. Carey, on behalf of the libellants, and Robert Rae, on behalf of the claim't.

159 JOHN FELL, a witness called and sworn on behalf of the claimant, testified as follows:

Direct examination by Mr. RAE:

Q. 1. Where do you live?
A. Erie, Pennsylvania.
Q. 2. What is your business?
A. Sailor.
Q. 3. How long have you been a sailor?
A. 14 years.
Q. 4. On the lakes?
A. No, sir; I have been four years on the lakes.
Q. 5. The other on the ocean?
A. Yes.
Q. 6. How old are you?

A. 25.
Q. 7. Do you know the schooner S. S. Osborn?
A. Yes, sir.
Q. 8. Do you know the schooner American Union?
A. Yes, sir.
Q. 9. Where was you on or about the 9th of August, 1872?
A. Somewhere in the vicinity of the Beaver, on board the Osborn.
Q. 10. Lake what?
A. Lake Michigan.
Q. 11. In what capacity were you there?
A. Before the mast; able seaman.
Q. 12. How long had you sailed in her?
A. All the season.
Q. 13. What trade has she been in?
A. Iron ore trade, between Erie and Escanaba all the season, until we went back to Cleveland.
160 Q. 14. Where were you bound?
A. Bound to Erie, as far as I understand. I was told we were bound to Erie; I don't know.
Q. 15. Loaded or light?
A. Loaded.
Q. 16. What with?
A. Iron ore.
Q. 17. What watch did you have?
A. I belonged to the starboard watch.
Q. 18. Where was you at that time?
A. I was below in the forecastle.
Q. 19. Did you have a collision?
A. Yes, sir.
Q. 20. Whereabouts did the collision happen?
A. About four miles or so off the Beaver light, between four and five.
Q. 21. With what vessel?
A. American Union.
Q. 22. You say you were below at the time?
A. Below at the time.
Q. 23. How long had you been below?
A. From eight o'clock.
Q. 24. Until what time?
A. I suppose it would be about ten minutes to twelve when the collision occurred.
Q. 25. At night?
A. Yes, sir; midnight.
Q. 26. What kind of a night was it?
A. It was a kind of a hazy night.
Q. 27. Moonlight?
A. No, sir; no moon.
161 Q. 28. What kind of wind had you?
A. It was a seven-knot breeze.
Q. 29. What brought you on deck?
A. The collision brought me on deck.
Q. 30. How soon after the collision occurred did you go on deck?
A. About four minutes after the collision.
Q. 31. Was you undressed?
A. No, sir, I wasn't undressed. I never do undress when I am on the lake; I leave my clothes on except my coat, hat, and boots.
Q. 32. Did you lay in the berth four minutes?

A. No, sir; as soon as the collision occurred I was out of my berth; as soon as the crack came I got up.

Q. 33. Did it take you four minutes to get up?

A. Yes, sir; we had to get assisted out of the forecastle.

Q. 34. Who assisted you?

A. Captain assisted me out and the mate.

Q. 35. How many were below?

A. There was four of us; there was three men and a boy.

Q. 36. Was you the last to go up?

A. I tried to get out another way, and I couldn't get through. The others got out while I was trying another way.

Q. 37. When you got out what did you do?

A. I saw a vessel laying alongside.

Q. 38. What vessel?

A. American Union.

Q. 39. Which side of you was she laying?

A. Port side.

Q. 40. How were her bows?

A. Her bows to our stern.

Q. 41. How did she appear in length to your vessel?

A. She was somewhere about the same length.

162 Q. 42. When you got up did you notice what sails she had up?

A. I looked at her; she had no mizzen.

Q. 43. Any other sails off?

A. I did not take any particular notice of any other sails.

Q. 44. Did you notice whether they were stowed away or came down by the ruin?

A. I believe they were stowed away. I went aboard after we got things a little straightened; they were stowed then.

Q. 45. How long did you remain aboard of your vessel before you went aboard of her?

A. About 8 minutes after the collision I was on board the American Union.

Q. 46. How soon after you got aboard did you go to see whether the mainsail was stowed away?

A. I didn't go to see that, but I took notice of that when I took the clothes on board; I took the passengers' clothes on board.

Q. 47. Did you notice what way the wind was that night?

A. Yes, sir; I took particular notice; the wind was to eastward of north.

Q. 48. How did you take particular notice?

A. I went aft and saw how our fly tailed; our fly tailed at about southwest of west.

Q. 49. Did you look at the compass?

A. Yes, sir; that is the way I found out. I did that after I came back from aboard the American Union. I just hove the clothes aboard and came right back again.

Q. 50. How long after you came on deck of your own vessel did you go aboard the American Union and come back?

A. I suppose it wouldn't take over ten minutes, the whole operation.

163 Q. 51. What else did you do to take particular notice—anything else?

A. Yes, sir; I took particular notice of the captain and the captain of the American Union. The captain of our vessel told the captain of

Q. 92. You could have seen the sails of the American Union rigged as she was?

167 A. No, sir; not rigged as she was; you could if she had canvas all on her. If she had bright canvas same as we had. We had pretty bright canvas. I guess you could see our canvas that night.

Q. 93. See your canvas a quarter of a mile?

A. No, sir; not a quarter of a mile that night.

Q. 94. An eighth of a mile?

A. Yes, sir; I guess so.

Q. 95. How do you say the American Union was rigged when you saw her?

A. She had her mizzen in.

Q. 96. Her mizzen was down?

A. Yes, sir.

Q. 97. All the rest of her sails were set?

A. No, sir; the main-gaff-topsail was not set.

Q. 98. All the rest were?

A. I cannot say for all the rest. I didn't look at the rest.

Q. 99. How was the American Union rigged when you first came on deck?

A. Fore gaff-topsail, foresail, head sails, and mainsail.

Q. 100. Supposing that the American Union was approaching your vessel, rigged as you say she was, two points over your starboard bow with the wind as it was and you was on the lookout, could you have seen her that night at the time when you came on deck 80 rods off without any light?

A. I cannot say that. I didn't take that particular notice.

Q. 101. Give me your best judgment as a seaman, whether you could have seen her or not an eighth of a mile off, under those circumstances.

A. No, sir; I don't think I could.

Q. 102. How far off could you have seen her?

168 A. That I cannot tell.

Q. 103. Could you have seen her once her length?

A. Yes, sir; I guess if I had been on the lookout I could have seen her the length of herself off, I think.

Q. 104. You think you could have seen her about the length of herself off that night?

A. Yes, sir; I think so.

Q. 105. You could have seen the American Union that night when you came on deck, if you had been on the lookout, with all her canvass spread, as you have stated, just one length off?

A. Yes, sir; I believe I could.

Q. 106. You could not have seen her any further, could you; it was so dark?

A. I guess not.

Q. 107. How high is your mainmast on which the fly was?

A. I don't know what the hight is.

Q. 108. How large is the fly on the top of the mast?

A. I suppose it is about the length of this room.

Q. 109. Fifteen feet long?

A. Yes, sir; I guess it is that.

Q. 110. Do you know?

A. I won't swear to it. I never measured it. I believe it is that long.

Q. 111. You could see that fly from the deck, couldn't you?

A. Yes, sir.
Q. 112. Is your mast a hundred feet long?
A. I don't know how high they are.
Q. 113. How long is the Osborn?
A. I don't know, sir.
Q. 114. How long is the American Union?
169 A. I don't know.
Q. 115. About how long?
A. I couldn't say how many feet she is.
Q. 116. You saw the stars that night?
A. Yes, sir; I saw the stars, certainly.
Q. 117. Many?
A. I saw stars; yes, sir.
Q. 118. Starlight night?
A. Overhead so, pretty bright.
Q. 119. A little hazy down by the water?
A. Yes; kind of hazy below.
Q. 120. Not much, was it?
A. Not extra.
Q. 121. How did Beaver Island light appear from you when you came on deck, from your vessel?
A. I don't know. I didn't take the bearing.
Q. 122. Did you see the red light of the American Union when you came on deck?
A. No, sir.
Q. 123. Didn't notice it?
A. No, sir.
Q. 124. Didn't notice any lights?
A. I didn't take notice of any lights.
Q. 125. On either vessel?
A. No, sir; not on either vessel.

Redirect examination by ROBERT RAE, Esq.:

Q. 127. When you came on deck of your vessel how were your sheets?
A. Flat aft, the main and mizzen; the fore boom lay on deck; the main boom was on top of the cabin, landed.
170 Q. 128. Had it been injured; broken in any way?
A. No, sir; when the foremast fell it let that go aft and it fell down on the cabin and lay there.
Q. 129. Your foremast broke, did it?
A. Yes, sir; and dropped down on deck amidships.

Recross-examination:

Q. 130. Did you notice which bow of your vessel was injured?
A. The port bow was injured most. I could see by the way the heel of the bowsprit was laying that he had struck us on our port bow, because he had split it and knocked it over to starboard, and the wreck went on that side, so I should suppose that is the way she struck us.

WILLIAM SMITH, a witness called on behalf of the claimants, being duly sworn, deposes as follows:

Direct examination by ROBERT RAE, Esq.:

Q. 1. What is your name, age, occupation, and place of residence?
A. William Smith; age, 32; occupation, sailor; I live in this country everywhere.

Q. 2. How long have you been a mariner?
A. This last fifteen years.
Q. 3. How long on the lakes?
A. About three years.
Q. 4. Do you know the schooner S. S. Osborn?
A. I suppose so.
Q. 5. Were you aboard of her this summer?
171 A. I have been on board of her the whole season.
Q. 6. Were you aboard of her on the 9th day of August, 1872?
A. I believe I was, sir.
Q. 7. Had she a collision?
A. Of course she had.
Q. 8. What with?
A. With the American Union, I suppose, sir.
Q. 9. Where did it take place?
A. It took place off the Beavers.
Q. 10. On Lake Michigan?
A. Yes, sir.
Q. 11. About what hour?
A. It was about 12 o'clock.
Q. 12. Where were you at the time of the collision?
A. I was down in the forecastle asleep.
Q. 13. How soon did you come up?
A. As soon as I could.
Q. 14. After or before the collision?
A. After the collision.
Q. 15. Had you your clothes on?
A. Yes, sir; I always sleep with my clothes on at sea.
Q. 16. When you came on deck what did you see?
A. I seen the schooner alongside of us.
Q. 17. The American Union?
A. Yes, sir.
Q. 18. How was her bow?
A. It was toward our stern.
Q. 19. Which side of you?
A. On the port side of us.
Q. 20. Do you know which way the wind was when you got on deck?
A. I never took notice of the wind.
172 Q. 21. What did you take notice of?
A. I took notice that the mast was down and the bowsprit out and one thing and another.
Q. 22. Of your vessel?
A. Yes, sir.
Q. 23. You don't know which way the wind was that night when you came on deck?
A. I never look at the compass.
Q. 24. Do you know whether it had been raining that night?
A. I couldn't tell, but it was very dark.
Q. 25. How far could a light be seen that night?
A. It is very hard to say; it is according to what kind of a light it is.
Q. 26. A vessel's light, of course.
A. If it was well trimmed I dare say you could see it a mile. His'n could not be seen, I don't think.
Q. 27. I am not asking you about his.
A. A light could be seen a mile or two miles.

Q. 28. How far could the hull of a vessel without a light be seen with the sails up?

A. Well, you couldn't see it 20 rods, I don't think.

Q. 29. Would it make any difference whether she was approaching you broadside or end on as to seeing her?

A. I don't think it would make any difference.

(Corrected hereinafter.)

Q. 30. You think you could see her just as well one way as the other?

A. If she had lights up.

Q. 31. If she had no lights up?

A. You could see her just as well one way as another, because there was a lookout all around.

173 Q. 32. You don't understand me, I guess. Can you see a vessel approaching you end on, as well as you can if you see her broadside, with her sails up?

A. Not quite as well; of course not.

Q. 33. Did you hear any conversation between the captain of the Osborn and the captain of the American Union?

A. All I heard that the captain of the American Union said that he was heading west.

Q. 34. That is all the conversation you heard?

A. That is all the conversation I heard.

Q. 35. Did you notice where the collision took place?

A. Off the Beavers.

Q. 36. How far off?

A. That I could not say; very close to it, though, I believe.

Q. 37. Did you notice how her sails were trimmed when you got on deck; that is the bark American Union?

A. I never took notice how her sails were trimmed. No, sir; I did not.

Q. 38. How were her booms trimmed?

A. I never took notice of the booms.

Q. 39. Do you know what I mean by sheets? I mean her canvas. Did you notice what sails she had on?

A. I only saw a mainsail and foresail, but I didn't see any mizzen.

Q. 40. Did you look for the mizzen?

A. I didn't look particularly, but I didn't see none.

Q. 41. Do you think you would have seen it if it had been on?

A. I was bound to see it if it was on.

Q. 42. Do you know whether it was stowed away or not?

A. I couldn't say if it was stowed away or not.

Q. 43. Didn't examine that?

A. No, sir; I never thought of it at the time.

174 Q. 44. How were your sails?

A. Our sheet was flat aft when I came on deck.

Q. 45. Did you find any of your booms on deck?

A. Yes, sir.

Q. 46. Which one.

A. The fore-boom was laying amidships and the main boom was about six feet from the rail.

Q. 47. Which side of the rail?

A. On the starboard side?

Q. 48. In board?

A. In board, yes, sir.

Q. 49. The foreboom was amidships?

A. Yes, sir, about amidships.
Q. 50. The foremast carried away?
A. Yes, sir.
Q. 51. Which way did it lay over?
A. It was laying on the port side a little.
Q. 52. Did it fall forward or aft?
A. It fell aft, sir.
Q. 53. What passengers had you aboard, any?
A. Yes, sir.
Q. 54. Who were they?
A. Had five women.
Q. 55. Did you put them aboard the American Union?
A. Yes, sir.
Q. 56. Do you know how the wind was when you went aboard that night?
A. I never took notice of the wind, but I know the sheet was aft at seven o'clock.
Q. 57. What did you do after the collision?
A. We sounded the pumps and pumped her out.
175 (Upon reading the testimony over the witness makes the following correction after the answer to the 29th question):
I didn't understand that fairly when you asked me the question, because a man of common sense knows that you can see better with broadside than head to.

Cross-examination by Mr. CAREY:

Q. 58. When you came on deck just after the collision, could you see stars?
A. No, sir; I couldn't then.
Q. 59. You can't remember.
A. I couldn't see no stars that I could remember because it was very dark when I came on deck. I couldn't see nothing hardly for as good as five minutes.
Q. 60. After you had been on deck for a while, do you remember seeing the loom of the land, Beaver Island?
A. I never looked for it.
Q. 61. Don't you recollect looking to see if you could see your fly, or the fly of the Union?
A. No, sir; I never looked for that either.
Q. 62. Did you see any other lights?
A. I seen the American Union's lights; they were burning very dim.
Q. 63. Nobody asked you for that.
A. Oh!
Q. 64. What made you notice the light of the American Union particularly?
A. Because I happened to look at it, and I called the captain
176 and told him he better have them lights in his cabin than have them where they are, because they are no use there.
Q. 65. Why?
A. Because we couldn't see it.
Q. 66. What was the reason?
A. They were burning very dim in the first place, and in the second place they were in the mizzen rigging where they could not be seen forward.
Q. 67. Are you sure they were in the mizzen rigging?
A. Sure.

Q. 68. Forward of the mizzen rigging?

A. They were in the mizzen rigging. I don't know if they were before the mizzen-rigging, aft the mizzen-rigging, or in the mizzen rigging, but they were close to the mizzen rigging or in the middle of it.

Q. 69. They were on the outside of the American Union?

A. Yes, sir.

Q. 70. Did you look at your own lights at the same time?

A. We had no lights at the same time.

Q. 71. No lights on your vessel?

A. No, sir; not when I looked at the American Union's lights because our lights were broke.

Q. 72. Was your port light broken?

A. Both of them were broken.

Q. 73. Both the port and starboard lights?

A. Yes, sir.

Q. 74. By the collision?

A. I suppose they were broken by the collision.

Q. 75. You don't know, do you?

A. I don't know if they were broken before that or not, but they were broken when I came on deck.

177 Q. 76. What kind of a night was it at the time you came on deck?

A. It was very dark.

Q. 77. You don't believe that you could see the canvas of a vessel that night once her length? You could not have seen the canvas of the American Union as she was approaching more than once her length off, could you?

A. I could not when I came on deck.

Q. 78. If you had been on the lookout of the Osborn could you have seen the canvas of the American Union over once her length?

A. If I had stood on the forecastle I don't think I could.

Q. 79. Suppose you had been on the lookout of the Osborn that night at the time when you came on deck, could you have seen the canvas of the American Union approaching you two points on your starboard bow?

A. I don't hardly think I could.

Q. 80. Once her length?

A. Well, I dare say I could see her once her length.

Q. 81. Do you know that the captain saw the north star that night, right after the collision?

A. I heard them speak about it, but I did not hear him have any conversation with the captain of the American Union about it.

Q. 82. When you can see the north star in the night it can't be a very bad night to see objects on the water, can it?

A. Of course not, when you can see the north star, but the whole night isn't alike though.

Q. 83. Answer my question. Is it a bad night to see objects on the water when you can see the north star.

A. No.

178 Q. 84. It must be a pretty bad night when you can only see the sails of a vessel once her length off?

A. Well, the finest night you ever saw you might not see them; because, if it is cloudy and dark you can't see nothing.

Q. 85. You don't mean to swear that you could not see on a night like this was when you came on deck, and you could see the north star,

and the captain saw the north star, that you couldn't see the sails of the American Union once her length off, do you?

A. It cleared up. After I had been on deck a while the stars came out.

Redirect examination by Mr. RAE:

Q. 86. You stated to the captain that the bark American Union lights might as well be in the cabin as where they were?

A. I did, sir.

Q. 87. Which captain did you state that to?

A. To my captain sitting there now.

Q. 88. Did you state it to the captain of the American Union?

A. No, sir; I did not.

Q. 89. Did you state it in his hearing?

A. I don't know if he was around or not. I couldn't tell?

(The proctor for the libellant objects to the conversation that occurred between the witness and the captain of the Osborn as related by him.)

179 JOHN MCDONALD, a witness called and sworn in behalf of testified as follows:

Direct examination by Mr. RAE:

Q. 1. What is your name and age?

A. John McDonald; 28 years of age.

Q. 2. What is your business?

A. Seaman.

Q. 3. What is your residence?

A. Erie at present—that is, when I get home I am at Erie.

Q. 4. That is your home?

A. Yes.

Q. 5. How long have you been a mariner?

A. About 13 years.

Q. 6. How long on the lakes?

A. This is the third season I have passed on the lakes.

Q. 7. Do you know the schooner Osborn?

A. I have been on the schooner Osborn since the latter end of July, I think. I think it was then I joined her.

Q. 8. Were you on board of her the 9th day of August, 1872?

A. The time of the collision?

Q. 9. Yes.

A. Yes, sir, I was there.

Q. 10. What post did you hold?

A. I was in bed sleeping—able seaman.

Q. 11. You were in the watch below?

A. Yes.

Q. 12. Were you on deck at the time of the collision?

A. No, sir.

Q. 13. Brought on by the collision?

A. The first crash, I got on my feet, and to stand and wait
180 until it was all over before I dared venture on deck.

Q. 14. You mean by that you waited until everything tumbled down before you went on deck?

A. Yes; I did not dare to go on deck until it was all over.

Q. 15. When you came on deck what did you see?

A. I saw the foremast gone; I saw the American Union lying alongside of us.

Q. 16. Where did you find your fore-boom?
A. Laying between the mainmast and the main-rigging.
Q. 17. Was it on the larboard or starboard side, or amidships?
A. On the starboard side.
Q. 18. How far over?
A. Half way.
Q. 19. Half way between that and amidships?
A. Half way between that and amidships. The end of the boom might be a little more towards the rigging line. It was just at the stre'ch of the sheet.
Q. 20. Lying on the deck?
A. Lying on the decks.
Q. 21. Where did you find the main-boom?
A. The main-boom was on the top of the cabin.
Q. 22. Broken?
A. No, sir.
Q. 23. You saw the bark American Union there? How did she lay alongside of you?
A. Her stern was at our bows.
Q. 24. About the same length as you were?
A. Well, I guess so pretty much.
Q. 25. You were both three-masters?
A. Yes.
Q. 26. Did you notice where her lights were hung?
181 A. I did not take so much notice. I did notice that they were at the mizzen rigging, but the precise spot I cannot say.
Q. 27. Do you know whether they were burning brightly?
A. No, sir; I did not take notice whether they were. I know I saw her red light, but that is all.
Q. 28. What kind of a night was it for seeing?
A. I did not take so much notice of that.
Q. 29. You do not know whether it was dark or light?
A. No, sir.
Q. 30. Did you notice how the American Union's sails were?
A. I did not notice anything except taking in the fore gaff top sail; and one of our men went to assist in taking it in, and I was surprised that he went to work for them and our vessel in such a state; but that is all.
Q. 31. Did you notice what sails were taken in on board of her at the time you got on deck?
A. Her mizzen was in as far as I could see.
Q. 32. Any other sails?
A. No, I did not notice any except the gaff top-sail.
Q. 33. What man was it that left your vessel to assist in taking in the fore gaff top-sail?
A. Peter Bowdy.
Q. 34. You do not know how far the collision occurred off Beaver Island.
A. I could not say.
Q. 35. Do you know which way the wind was when you came on deck?
A. I did not look to see how the wind was.
Q. 36. Did you look after you came on deck?
A. No; I looked at how the sheets was when I came on deck,
182 they were flat aft.
Q. 37. On what vessel?

A. On the Osborn.

Q. 38. And that is all you did see?

A. That is all I did see. I heard a little afterwards—not much.

Q. 39. What did you hear afterwards?

A. I heard Captain Seamens ask—there was some noise, exactly I cannot say—but there was some talk about hurrying up to get clear. Captain Seamens asked where we was, that we were in a hurry, and wanted to get away, and says he——

Q. 40. Who says?

A. Captain Seamens asked where we was. Well, says he——

Q. 41. Who says? Captain Seamens asked, and who answered?

A. I don't know exactly the man who answered. It was one belonging to the American Union. He said, "We will be down on the North Fox soon," says he "I want to get my anchor clear in case of an accident."

Q. 42. Anything else did you hear?

A. No, sir.

Q. 43. That is all you heard?

A. That is all I heard that I remember.

Q. 44. Did you see your captain show the captain of the American Union the north star?

A. I did not; I was not there.

Q. 45. Did you see the north star?

A. I did not look for it. I might have seen it, but I did not look for it.

Q. 46. You think if you had looked for it, and it had been there you would have seen it?

183 A. Yes, I know it when I see it, but I did not look for it. I was much too confused.

Cross-examination by Mr. CAREY.

Q. 47. This was not a very dark night; was it?

A. Well, it was pretty dark. It was one of these kind of rainified nights—dark; but you could see lights, I guess, far enough to avoid a collision.

Q. 48. See canvas far enough off to avoid a collision, could you not?

A. No, sir; I do not think it.

Q. 49. Could you see canvas the length of the vessel?

A. You might see canvas the length of the vessel, but that is not far enough off to avoid a collision in certain cases.

Q. 50. Did you look to see if you could see your fly?

A. I did not.

Q. 51. Did you look at the time when you saw the Beaver Island light; did you see the loom of the land?

A. No, sir; I did not look for the loom of the land at all, I just remember seeing the light, that is all. There is one good reason for not being so accurate in my statements. I was pretty well terrified.

Q. 52. That will account for your not seeing the north star, and for not seeing canvas for a distance.

A. I did not think it was any of my business to look after anything, only to do as I was told.

JOHN BAKER, a witness called and sworn on behalf of respondent, testified as follows:

184 Direct examination by Mr. RAE.

Q. 1. What is your name and age?

A. John Baker; age about 32, I guess.

Q. 2. What is your business?
A. Sailing.
Q. 3. Where do you live?
A. In Erie, Pennsylvania.
Q. 4. How long have you been a mariner; how long have you been a Jack?
A. About eighteen years.
Q. 5. How long on the lakes?
A. About four or five years.
Q. 6. On the lakes about four or five years?
A. Five years.
Q. 7. Where did you sail last summer?
A. I sailed here on the lakes last summer.
Q. 8. In what schooner?
A. The Osborn for one, the H. F. Marie for another, and the scow Frank Wilcox for another.
Q. 9. Did you have a collision on or about the 9th of August, 1872, while you were on board the Osborn?
A. When we had the collision with the American Union I was on board.
Q. 10. Were you above or below at the time?
A. I was below.
Q. 11. Did you come on deck before the collision?
A. No, sir.
Q. 12. How soon after the collision?
A. As soon as I heard the cracking, as soon as I could get out I got out.
185 Q. 13. When you got out what did you observe about the night, was it bright moonlight or dark?
A. No, sir; it was a very dark night.
Q. 14. It had been raining?
A. Not that I know of; it might have been raining during the watch below. I cannot say but it was very dark.
Q. 15. You didn't hear of its raining?
A. No, sir.
Q. 15. *a*. State what you saw of your own vessel, first, how were the booms?
A. The main boom was lying flat down on the cabin.
Q. 15. *b*. How was your fore boom?
A. That was lying amidships down on deck when I got out.
Q. 16. Where was your foremast?
A. Laying down on deck, too.
Q. 17. Was it your watch below?
A. It was my watch below when this happened. I came on deck, of course, when the collision was.
Q. 19. How did the American Union lay?
A. It laid right alongside of us when I came on deck.
Q. 18. How did you find your sheets trimmed?
A. Right flat by the wind, as flat as we could get them.
Q. 20. Did you notice what sail she (A. Union) had taken in?
A. I did not notice exactly; she did not have any mizzen on, I noticed that.
Q. 21. How soon did you notice that after you came on deck?
A. Well, I suppose about five minutes after. I could not say.
Q. 22. Did you see anybody taking it in?
A. No, sir.

Q. 23. Did you notice where her lights were?

A. Her lights were aft.

186 Q. 24. Whereabouts?

A. On the quarter by the mizzen rigging?

Q. 25. That is the American Union's lights?

A. Yes.

Q. 26. Did you notice whether her mainsail was reefed or not?

A. Her mainsail was reefed.

Q. 27. Do you know which way the wind was that night?

A. I know exactly how the wind was at eight o'clock?

Q. 28. How was it at eight o'clock?

A. When I went below at eight o'clock we were heading E. ½ N. to E. by N., because the wind was not very steady; the wind was about east by north, half east, something like that at eight o'clock.

Q. 29. You were steering how?

A. East half north, and sometimes east by north.

Q. 30. Did you hear any conversation between your master and the other master?

A. No, sir.

Q. 31. Did you see the north star?

A. I did after the collision.

Q. 32. How long after?

A. Well, I should say it was about twenty minutes, as near as I could guess.

Q. 33. Did it begin to clear up—brighten up?

A. Well, it cleared up then; yes.

Q. 34. You did not hear anything said about the direction of the wind after the collision, did you?

A. All I heard said our captain told us.

(Objected to.)

Q. 35. Did he state it in the presence of the other captain?

A. That I did not see, but I heard our captain talking.

187 Q. 36. Did you go to the compass after you got on deck and look?

A. Yes.

Q. 37. How did you find the wind then?

A. North by east.

Q. 38. How soon after you came on deck did you go to the compass?

A. About ten or fifteen minutes, as near as I could guess.

Q. 39. Are you sure of that?

A. I am sure of that.

Q. 40. How do you remember that? How did you come to go to the compass and look?

A. Because our captain said he had just been showing the captain of the American Union how the wind was, and I went aft and looked, and that was the thing that brought me to look at the compass.

Q. 41. Do you know how far this occurred off Beaver Island?

A. I suppose about three miles, as near as I can come to it.

Q. 42. Were you taken in tow by the American Union there?

A. Yes, she tried to tow us.

Q. 43. Did you stay on deck during the rest of the night?

A. Yes.

Q. 44. What did you pass during the time?

A. The North Fox and the South Fox.

Q. 45. What time did you pass them, and how far from them, and how did they bear?

A. We were abreast of the South Fox about 6 o'clock, I should say.
Q. 46. How did it bear away from you?
A. Beaver Island bore to the north of us.
Q. 47. How did the North Fox and the South Fox bear?
A. The South Fox bore to the south of us.
188 Q. 48. How far off were you from them?
A. I should say about four miles off the South Fox.

Cross-examination by Mr. CAREY:

Q. 49. How long after the collision was it that you went to look at the compass to see how the wind was?
A. I should say about fifteen minutes, as near as I could guess.
Q. 50. You did not notice the stars that night, did you?
A. I did.
Q. 51. When you came on deck?
A. No, sir; it was dark then.
Q. 52. It was between that time and the time you went to look at the compass?
A. The stars came out about fifteen to twenty minutes after I came on deck.
Q. 53. Was it a starry night?
A. It was not very starry. I could not call it exactly starry, but there was a fresh breeze blowing.
Q. 54. Blowing a pretty sharp breeze, seven or eight knots?
A. We were going about 7 or 8 knots, 7 knots I should say the most.
Q. 55. Was it foggy?
A. No, I cannot say it was foggy; it was dark, a real dark night.
Q. 56. You do not have fog very often with a stiff breeze, do you?
A. Yes; sometimes we will have fog with a stiff breeze, too.
Q. 57. Do you often have fog with a stiff wind from the north?
A. Well, it may be sometimes. I don't know exactly.
189 Q. 58. You have seen a great deal darker nights than this, haven't you?
A. I do not think I have, not much darker. It looked to me very dark when I came on deck.
Q. 59. You were somewhat frightened, were you not, when you came on deck?
A. I was until I found out how we were situated.
Q. 60. So you do not know whether the stars were shining when you came on deck or not?
A. There was no stars out when I came on deck. I know for certain.
Q. 61. Did you look?
A. I was bound to look for something, because I could not see anything.
Q. 62. Did you look to see your fly when you came on deck?
A. I did when I looked at the compas', but when I came on deck first I had something else to look after excepting the fly.
Q. 63. What was you looking after?
A. I was first to find out if we were going to sink, and then I wanted to find out what was up.
Q. 64. Did it take you fifteen minutes to ascertain that?
A. No, sir; it did not.
Q. 65. What did you do in the balance of the time?
A. We sounded the pumps, and we made a line fast to the American Union; such things as that.

Q. 66. You had no difficulty in seeing around the deck and getting at what you wanted, did you?

A. Yes, sir; I had great difficulty.

Q. 67. One of the worst nights you ever saw on the lakes, wasn't it?

A. No, sir; it was not.

190 Q. 68. Darkest?

A. It was just about as dark, because I told you I just came out of the cabin, and, being half asleep, I thought it was very dark, as dark as anything could be.

Q. 69. It continued very dark; the darkest night you ever saw up to about the time you went to see the compass, a very bad night up to that time.

A. It was very dark.

Q. 69. And then all at once it cleared up and you saw the north star?

A. It cleared away fifteen or twenty minutes after I came on deck.

Q. 70. Was it the weather cleared away or your head cleared away?

A. My head was clear enough when I came on deck, but the weather—you know the sky broke.

Q. 71. Which was it that was in trouble, your head or the weather when you came on deck?

A. I don't think there was much trouble in my head or the weather to tell the truth.

Q. 72. It cleared away about the time you went to see the compass?

A. Yes.

Q. 73. All at once?

A. It got clear; the stars came out.

Q. 74. Bright?

A. The stars came out quite bright.

Q. 75. And cleared up on the water pretty well?

A. Yes.

Q. 76. When it cleared up on the water, could you have seen
191 the canvas of a vessel approaching you at the time when you went to look at the compass, approaching on your starboard bow, say two points?

A. When it cleared up do you mean?

Q. 77. Yes; could you have seen it a quarter of a mile off?

A. After it was cleared up; yes, I could.

Q. 78. Half a mile?

A. I dare say we could half a mile.

Q. 79. Then you could not have seen it at all when you came out of the cabin?

A. I could not.

Q. 80. Do you think the lookout could at that time on your vessel?

A. I think it would have been pretty to see it.

Q. 81. When you came out of the cabin?

A. Yes.

Q. 82. Was it the trouble that the weather was so bad, or was something the matter with your eyesight?

A. My eyesight is real good, thank God.

Q. 83. I mean at that time?

A. At that time real good, too, straight as could be.

In U. S. district court, northern district of Ohio.

WILLIAM G. WINSLOW ET AL., LIBELLANTS,
vs.
SCHOONER S. S. OSBORN, B. O. WILCOX, claimant.

It is stipulated in the above-entitled cause that the evidence this day taken at Chicago by J. L. Bennett, notary public, on behalf of the
192 claimant, may be taken by the notary in "short-hand," and the signature of the witnesses is waived and signed by the notary for them.

ROBERT RAE,
Proctor for Claimant.
WILLEY, CAREY AND TERRELL,
Proctor for Libellants.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, J. L. Bennett, a notary public duly appointed in and for the city of Chicago, county of Cook, and State of Illinois, do hereby certify that the reason for taking the foregoing depositions is, that the testimony of the witnesses aforesaid is necessary in the cause in the caption of the said depositions named, and that said witnesses live at a greater distance from the place of trial than one hundred miles; that said testimony was taken upon reasonable notice given in writing by the respondent to the libellant attorneys of record. That on the 4th day of December, 1872, I was attended by John C. Carey, proctor for the libellant, and Robert Rae, who appeared for the respondent, and by the said witnesses, and each of the witnesses was by me carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and the testimony by him given was by me reduced to writing; that said testimony was taken by consent of the parties present, and the signatures of the witnesses were waived
193 by stipulation, and that I am not of council or attorney to either of the parties, nor in any way interested in the event of the cause named in the said caption.

In witness whereof I have hereunto set my hand and seal this 5th day of December, A. D. 1872.

[SEAL.] J. L. BENNETT,
Notary Public in and for the City of Chicago, Cook County, Illinois.

THE STATE OF ILLINOIS,
Cook County, ss:

I, J. L. Bennett, a notary public in and for the State and county aforesaid, duly commissioned and qualified, do hereby certify that the above-named witnesses, John Fell, William Smith, John McDonald, John Baker, were by me first severally sworn to testify the truth, the whole truth, and nothing but the truth, and that the depositions were reduced to writing by myself and A. L. Devison, he being a proper person and not interested in the suit, in my presence and in the presence of the witnesses respectively, and the signatures of the witnesses were waived as by stipulation hereto annexed, in my presence, and were taken at the time and place in the annexed notice specified, and continued from day to day, as above set forth. I do further certify,

that I am not council, attorney, or relative of either party, or otherwise interested in the event of this suit; that all informalities in the taking of the depositions and certifying same were waived.

In witness whereof I have hereunto set my hand and seal of
194 office this 5th day of December, A. D. 1872.

[SEAL.] J. L. BENNETT,
Notary Public in and for the City of Chicago,
Cook County, Illinois.

In the U. S. district court within and for the northern district of Ohio.

THE STATE OF OHIO,
Northern District, ss:

W. G. WINSLOW ET AL., LIBELLANTS,
vs.
SCHOONER S. S. OSBORN AND B. O. WILCOX, claimant and cross-libellant, defendant. } In admiralty.

The libellants will take notice that on Monday, the thirteenth day of January, A. D. 1873, the above-named cross-libellants will take the deposition of Peter Bondy and Sylvester Smith, sundry witnesses, to be used as evidence on the trial of the above-entitled cause, at the office of Lathy and Lathy, attorneys at law, in the city of Erie, county of and State of Pennsylvania, between the hours of one o'clock a. m. and 9 o'clock p. m. of said day, and that the taking of the same will be adjourned from day to day, between the same hours, until they are completed.

PRENTICE & VARCE,
Att'ys for Claimants and Cross-Libellants.

I acknowledge service of the above notice by copy, this 8th day of Jan., 1873, and waive all objections to form of notice and to
195 time.

WILLEY, CARY AND TERRELL,
Attorney' for Libellants.

Caption.

Depositions taken before me, A. D. Farce, a deputy clerk of the United States circuit court, within and for the western district of Pennsylvania, pursuant to the annexed notice, at the time and place therein specified, to be read in evidence on behalf of the cross-libellants, in an action pending in the United States district court in admiral'y, in and for the northern district of Ohio, in which W. G. Winslow et al., libellants, are plaintiffs, and schooner S. S. Osborn and B. O. Wilcox, claimant and cross-libellant, are defendants.

Present, H. L. Terrell on behalf of the libellants, and George W. Lathy and Son on behalf of the cross-libellants.

SYLVESTER SMITH, of lawful age, being by me first duly sworn, as hereto specified, deposes and says as follows:

1. Question. (By GEO. W. LATHY & SON). State your name, age, occupation, and place of residence.

Answer. My name is Sylvester Smith. I am 38 years of age. I am a seaman by occupation, and I reside in Erie, Erie County, and State

of Pennsylvania. I was steward on the schooner S. S. Osborn, from some time in July, A. D. 1872, until some time in September, A. D. 1872. On the 9th day of August, 1872, when our schooner, the Osborn, was
off the head of the Beavers, at the foot of Lake Michigan, at
196 about eleven o'clock and forty-five minutes p. m. I heard the crash occasioned by the carrying away of our bowsprit. When I opened the kitchen door to come on deck the foremast was falling aft. When I got on deck it was so dark I could not see the vessel's length; then the American Union swung alongside of us. After the American Union swung alongside of us we got the women aboard of us transferred to the American Union; then Captain Parsons came aboard of us, and Captain Seamens took him aft to the binnacle, and showed him how we was heading. Before this it was so cloudy you could not see a vessel's length; but at this time the sky changed, and it was quite light when they were at the compass. Captain Seamans told Captain Parsons, "you can see where our sheets lay, they were as close aft, short on the wind as they could be, and keep our course." Captain Parsons replied, "I saw your green light some time before I struck you, but could not see any other light." The vessel was sharp on the wind when I came on deck. The sheets were flat aft. The main boom, which was as far aft as possible after the collision, was not changed from its position until some time after we left for Cleveland. Captain Parsons was examining our charts soon after the collision, and said he was afraid we were drifting upon the North Fox island. I don't know why Captain Parsons asked for our chart.

Cross-examination by H. L. TERRELL, att'y for libellants:

Q. 2. How far from Beaver Island light did the collision occur?
197 A. About seven miles from Beaver Island light.
Q. 3. What time did you turn in that night?
A. I turned in about 9 o'clock.
Q. 4. Where was your bunk?
A. On the port side.
Q. 5. Did you remain in your bunk from the time you turned in until the collision?
A. Yes, sir.
Q. 6. Were you asleep at the time of the collision?
A. Yes; I was asleep at the time.
Q. 7. Was there a light in the kitchen as you passed through?
A. No, sir; the light was out in the kitchen when I got up.
Q. 8. What passage did you go through from Escanaba?
A. I cannot say.
Q. 9. What time did you go through the passage?
A. I could not say, sir.
Q. 10. Did the main boom fall before or after you came on deck?
A. After I came on deck.
Q. 41. Did it fall before or after your vessel swung around from the force of the collision?
A. I did not see it fall, but discovered it when I was aft.
Q. 12. Where was you when Captain Seamans and Captain Parsons were aft at the binnacle?
A. I was aft myself; was aft the binnacle while they were there.
Q. 13. What were you doing?
A. I had a hand-lantern in my hand, and was holding it for Seamans and Parsons to see.
Q. 14. Who else was aft at that time?

A. No one but the two captains and myself.

Q. 15. Where were the balance of the crew?

198 A. All forward and about the decks.

Q. 16. It was at this time that the conversation between the two captains which you have narrated in your direct examination took place?

A. Yes, sir.

Q. 17. Where did the two captains go after leaving the binnacle?

A. Into the cabin.

SYLVESTER SMITH.

PETER BONDY, of lawful age, being produced, sworn, and examined on part of cross-libellants, by Lathy and Son, did testify as follows, to wit:

My name is Peter Bondy; I am twenty-one years of age; I live in Erie, Erie County and State of Pennsylvania; my occupation is that of seaman.

Q. Was you employed on the schooner Osborn during August, A. D. 1872; and, if so, in what capacity?

A. I was; I was sailing before the mast.

Q. Was you on board the said schooner at the time of the collision with the American Union?

A. Yes, sir.

Q. State when the collision occurred.

A. It was in August, on Friday evening, I think. I don't recollect what day of the month.

Q. Where was you when the collision occurred?

A. I was at the aft pump.

Q. What time in the day or night did the collision occur?

A. It was about ten minutes before twelve.

Q. Where were the vessels at the time of the collision?

A. About 3 miles off the "Skillagalee" light or Foxes light, I

199 am not certain which.

Q. What was you doing at the pump?

A. I was pumping.

Q. What was the effect of the collision upon the Osborn?

A. It took away her bowsprit, foremast, jib booms, gallant forecastle, and damaged the rail.

Q. At time of the collision was it dark or moonlight?

A. It was dark.

Q. Was it very dark?

A. Yes; it was pretty dark.

Q. How far could you see in the darkness?

A. About a ship's length.

Q. After the collision what did the American Union do?

A. She came alongside of us and remained alongside for about two hours.

Q. What canvas did the American Union have on at the time of the collision?

A. She had on her foresail, mainsail, fore gaff-top sail, and some of her jibs; I think her fore-stay sail, jib, and flying jib.

Q. How was the canvas of the Osborn trimmed just before the collision?

A. She was flat aft.

Q. What canvas had the Osborn on at that time?

A. She had all her canvas on that time.

Q. Did the Osborn have her square sail and raffey on at that time?
A. I think the raffey was on, but that the square sail was not on.
Q. Was any one else on deck at the time of the collision but yourself?
A. Yes, sir. I now think the square sail was set, and the raffey
200 was off. I now think they were both off.
Q. Who were they?
A. The mate, Wesley Seaman; James McNeil, a sailor; Peteo Leib, a sailor.
Q. Who was at the wheel?
A. Peter Leib, sir.
Q. Who was was on the lookout?
A. I was, sir.
Q. How long before the collision had you gone to the pumps?
A. About four minutes or so.
Q. Before you left the lookout, did you see any light?
A. No, sir.
Q. When you say you saw no light, did you mean a vessel's light or the beacon light?
A. I saw the light-house, but did not see any vessel's light.
Q. At daylight next morning how far was you from South Fox?
A. I don't know, sir.
Q. Did you see a propeller at the wood-docks at South Foxes?
A. Yes, sir.
Q. Did you see the propeller plainly?
A. Yes, sir.

Cross-examination by H. L. TERRELL, Esq., on part of libellants:

Q. Whose watch was you on?
A. On the mate's watch.
Q. What time did your watch come on deck that night?
A. At eight o'clock.
Q. What was your post from, 8 to 10?
A. On the lookout?
201 Q. Where were you the balance of the time?
A. It was my look-out from 8 to 12 all the time.
Q. Which way did the light which you say you were about three miles from at the time of the collision, bear from you?
A. Off the port bow.
Q. Which way were you heading at that time?
A. I could not tell; somewhere along east, I should judge.
Q. How were your canvas trimmed when you came on deck at 8?
A. The sheets were chock aft.
Q. What time did you come through the passage from Escanaba?
A. It was between four and six in the afternoon.
Q. How many men did it take to man your pumps?
A. Three men.
Q. What would be the position of three men at the pumps while manning it?
A. Two on the port side and one on the starboard.
Q. Couldn't two men man the pumps?
A. Not very easy, sir.
Q. How many men do you usually have to work your pumps?
A. All hands when they were on deck.
Q. Who called you aft from your post on the lookout?
A. The mate, sir.

Q. At the time of the collision, then, all the men on deck were at the pumps, except the man at the wheel?
A. Yes, sir.
Q. Where was the pump situated?
A. Aft the main-mast; one on the port and one on the starboard side.

Q. Describe the position of the mate, O'Neil, and yourself
202 at the pumps.
A. I have forgotten the position.
Q. On which side of your main sheet were you?
A. On the port side.
Q. How long before the collision did you first see the American Union?
A. About 12 or 15 seconds, I should think.
Q. What part of her did you first see?
A. Her bow.
Q. From which side did she approach you?
A. On our starboard bow.
Q. Who first saw her?
A. I couldn't tell you, sir.
Q. Where were you after the collision; say, for ten or 15 minutes?
A. I was on the deck of both the Osborn and the American Union.
Q. What others of the crew were with you?
A. They were all about the decks; I can't tell who was with me.
Q. At what point did you get aboard the American Union?
A. Forward.
Q. Who else was aboard the vessel besides the officers and men?
A. Some women passengers.
Q. How many of them?
A. Five of them.
Q. Who were they?
A. Mrs. Wilcox and daughter; the rest I don't know by name.

PETER BONDY.

203 UNITED STATES OF AMERICA,
Western District of Pennsylvania, ss:

[SEAL.] I, A. D. Force, deputy clerk of the circuit court of the United States for the western district of Pennsylvania, duly qualified and commissioned by the judges of the third judicial circuit, do hereby certify that the above named Sylvester Smith and Peter Bondy were by me first severally sworn to testify the truth, the whole truth, and nothing but the truth, and that the depositions by them respectively subscribed as above set forth, were reduced to writing by me and in the presence of the witnesses respectively, and were subscribed by the said witnesses in my presence, and were taken at the time and place in the annexed notice specified.

I do further certify that I am not counsel, attorney, or relative of either party, or otherwise interested in the event of this suit.

In witness whereof I have hereunto set my hand and affixed the seal of said court at Erie, in said district, this 14th day of January, A. D. 1873.

A. D. FORCE,
Dep'ty Clk and U. S. Com'r.

204 In the district court of the United States within and for the northern district of Ohio.

THE STATE OF OHIO,
Northern District, ss:

WILLIAM G. WINSLOW AND HEZEKIAH J. Winslow, libellants,
against
THE SCHOONER S. S. OSBORN AND BLISS O. Wilcox, respondent and cross-libellant.

The libellants will take notice, that on Saturday, the 12th day of April, A. D. 1873, the above-named respondent and cross-libellant will take the depositions of John French, to be used as evidence on the trial of the above entitled cause, at the office of Charles Dressler, No. 63 Central Union Block, in the city of Chicago, county of Cook, and State of Illinois, between the hours of 8 o'clock a. m. and six o'clock p. m. of said day, and that the taking of the same will be adjourned from day to day, between the same hours, until they are completed.

PRENTISS AND VARCE,
Attorneys for Respondent and Cross-Libellant.

We acknowledge service of the above notice by copy this 8th day of April, 1873.

WILLEY, TERRELL AND SHERMAN,
Proctors for Libellants.

205 In the district court of the United States for the northern district of Illinois.

WM. G. WINSLOW
vs.
SCHOONER S. S. OSBORN. } In admiralty.

Depositions of John French, taken on behalf of the before Chas. L. Driesslien, United States commissioner, on April 18th, 1873, at the office of Rae and Michell, in the city of Chicago. Present, Robert Rae proctor for , and Mr. Sherman proctor for .

Said witness being first duly sworn, testified as follows:

Deposition of Captain John French.

Examined by Mr. RAE.

Q. What is your name?
A. John French.
Q. Captain, where do you reside?
A. I reside in Baltimore, State of Maryland.
Q. What is your business?
A. Captain of a vessel.
Q. How long have you been a sailor, captain?
A. Fourteen years.
Q. How long have you been a master on the lakes?
A. A master on the lakes? Been a master one season, and what you call a passage the year before that.
Q. Was you master on the seaboard?

A. No, sir.
Q. What capacity?
A. Well, last four or five years in the capacity of mate, second mate, and mate.
206 Q. What vessel were you on on the 9th of August last?
A. Schooner Philo Scovill.
Q. Where was she about twelve o'clock at night that day?
A. On the ninth?
Q. Yes.
A. About two or three miles to the southward and westward of the South Manitou Island, on Lake Michigan.
Q. Captain, do you know what way the wind was—in what direction?
A. As near as I can judge the wind was about north by east—the way I had the wind.
Q. What opportunities had you for knowing?
A. Well, we noticed by the compass frequently, and moreover our course, after we got by that island was about south by west. I could not steer any better than southwest by south and southwest, varying very little—a point or so.
Q. Were you on deck at that hour?
A. Yes, sir.
Q. How long had you been on deck?
A. I didn't go below until about two o'clock. I had been on deck all night.
Q. What kind of weather was it?
A. The fore part of the night been very squally—in the afternoon from about four o'clock until about ten; wind baffling until about ten.
Q. Any fog?
A. It looked kind of dark. I had some rain.
Q. How was the wind, steady or baffling?
A. From ten to twelve steady, baffling about one point or so.
207 Q. Were there any headlands at or near where you went which would have a tendency to change the course of the wind near shore?
A. Well, no, sir; not the way we had the wind. If the wind had been off the land they might have said so. The wind from the northward and eastward was off the lake. The nearest land to me then, astern of me, was what we call the South and North Fox.
Q. That's to windward of you?
A. Yes; that's to windward.
Q. How far to windward?
A. Probably about twenty miles or so—somewheres in that neighborhood.
Q. When the wind blows landward—towards land—does it make any difference when near land in the course of the wind?
A. Well, yes, sir; sometimes it does. I have always had it in my experience on the lakes, and any alteration in the direction of it, sometimes heavy and sometimes light.
Q. When it blows off the land does it change the wind?
A. There is no shift to it much. We have it sometimes light and sometimes heavy, but we have it in the same direction, from what experience I have seen.
Q. How was this wind; was it a top wind, or wind all over, from top to bottom?

A. I call it a steady wind—as much up aloft as there was down below.

Q. Didn't notice any current of air aloft different from that on deck?

A. No, sir.

208 Cross-examination by Mr. SHERMAN:

Q. Where do you live, captain, now?

A. My place of residence is in Baltimore, State of Maryland. I have been in Chicago all winter.

Q. Whereabouts in Chicago do you live?

A. I live on board the vessel all winter.

Q. What vessel?

A. Philo Scoville.

Q. Who were on board that vessel last August?

A. I have to study, I had so many.

Q. At the time?

A. I was captain of her.

Q. You were master?

A. Yes, sir.

Q. Who was your mates or mate?

A. As near as I can judge, let's see—when was it, in August? I have had eight or nine mates, and could not tell at present; but if you require I will go on board and look at the dates of payment as I made them.

Q. How many seamen had you?

A. Six seamen.

Q. What were their names?

A. I cannot tell you that either, sir.

Q. Can't you name any of them?

A. Not of that month. I can refer to my books.

Q. Can you name any seaman that has sailed with you during the last season?

A. I can name several. Generally discharged them every trip. Fitz Anson, Peter Miller, Peter Norman; that's about all the sailors I can name.

209 Q. Do you know where any one of them are living now?

A. No, sir.

Q. Can you name any one of your mates?

A. I had last season? Oh, yes, I can name several of them—Daniel Robinson.

Q. Where is he?

A. In Buffalo.

Q. That's one.

A. Langnan McFadden. He is in Milwaukee, I believe, and George Harper, James Lingan—as near as I can judge his name is James. His name is Lingan any way. Archibald Stevens.

Q. Where does he live?

A. Buffalo. There is one Louis Guthrie was second mate; George Mays, second mate, Chicago here.

Q. How many vessels did you sail on last season?

A. Only one, sir.

Q. That was the Philo Scoville?

A. Yes, sir.

Q. Were you master during the whole season?

A. Yes, during the whole season.

Q. How many vessels did you sail on the season previous?

A. I sailed her one passage the fall of last season during the death of the captain. Previous to that I was mate that year; then I was one year absent out of her; mate on the bark Favorite. Then previous to that again I was mate of the same Philo Scoville about three years; makes about seven all told, I guess.

Q. And during those seven years you have been sailing on the lakes?

210 A. Yes, sir.

Q. I understood you to say you had been sailing fourteen years. Where were these other years passed?

A. At sea, as near as I can judge these fourteen.

Q. On what voyage were you bound last August at the time of this collision?

A. From Buffalo to Chicago.

Q. And with what sort of a cargo?

A. To Chicago with coal.

Q. And where did you state you were the night of the 9th of August?

A. At twelve o'clock I was about three miles—two or three miles—to the southward and westward of South Manitou Island.

Q. How far were you from Beaver Island at twelve o'clock the night—the ninth of August?

A. Let's see. I was probably two or three miles over thirty-five miles from that. Generally called about 35 miles from these islands to Beaver Island.

Q. Bound up?

A. Bound up.

Q. What course were you steering that night?

A. I was steering from southwest to about southwest by south. I could not steer any better.

Q. By the compass?

A. By the compass.

Q. You stated the night was—you may state what sort of a night it was.

A. Well, it is what we call a squally night up to about ten o'clock.

Q. Was there any rain?

211 A. Yes; sir.

Q. Up to what time?

A. The most rain was about four to five o'clock, and it was showers occasionally up to about nine.

Q. And from that time on how was it?

A. Could not call it really fine weather until from 10 to 12.

Q. Were the stars shining?

A. From ten to twelve all stars *was* not out, but stars seen occasionally—what we call a fair night.

Q. How far could you see a vessel about twelve o'clock from the deck of your ship-vessel?

A. Depends altogether upon what kind of a light you had. Could see a good light at least 8 or 10 miles.

Q. How far could you see a vessel's sails, that was sailing without any light, opposite to you?

A. Just sailing along?

Q. Yes.

A. Couple or three miles.

Q. How far could you see a vessel sailing ahead of you?

A. About the same distance. There ain't any difference sailing head on no more than there is a beam, without she shows her lights.

Q. In what direction was the sea running that night?

A. Well, up to about ten o'clock the sea was——

Q. About from ten to twelve?

A. Say up to about ten from the northwest; kept running from the northwestward as the wind canted.

Q. Up to ten o'clock it was running from the west?

A. Call it about west or west-northwest.

Q. And from that time on how was it running?

212 A. There is one thing about it: the wind from the westward and northwest, as the wind goes to the north, of course it varies. It was squally running from the north, probably about ten o'clock; the sea was well from the northwest.

Q. How far off the land were you at twelve o'clock that night?

A. About three miles, I guess; between two and three miles.

Q. In what direction from the land in reference to the wind?

A. About southwest.

Q. I mean with reference to the wind.

A. The wind was about north by east, as near as I can tell you.

Q. What do you call that—to windward of the land?

A. No; wind was astern a little. We were to the leeward of it. The wind was blowing after the vessel. Of course you want to get to the windward. You got to haul by the wind.

Q. Now, what time did you get on deck that night?

A. I hadn't been below at all from the night before until two o'clock that morning. I was on deck all day and all night up to two o'clock.

Q. Did you note the course of the wind at the various hours of the night?

A. Well, not really particularly, unless the wind canted considerable; however, the wind came out in squalls at four o'clock to the westward, and kept to the westward for a spell, and then went about to the west-northwest, and then northwest, and when I got to the Menton Islands, the wind canted to the northward.

213 Q. About what time did the wind turn from the west around to the north?

A. It commenced, I suppose, about eight o'clock; it commenced gradually.

Q. About what time did it reach the northwest?

A. About between nine and ten o'clock, as near as I can judge.

Q. How long before you found it in the north?

A. It was probably about half-past ten, I judge; between half past ten and eleven o'clock, as near as I can judge.

Q. What tends to fix the direction of the wind in your mind so accurately, captain, upon any one particular night six or eight months ago?

A. It h'aint been fixed in my mind that night more than any other night. A master of a vessel in a case like that coming by this land is generally keeping a watch of it.

Q. Did you keep a log?

A. I did not; if I had I could give you the exact direction; that's as near as my judgment can give it.

Q. There is then nothing by which you fix the direction of the wind in your mind except your general recollection?

A. Yes, sir; there is in one respect. When we get by the Minton Islands our course is south by west for Chicago, then we are clear of

land. We have two hundred and twenty-one miles clear of land to run for Chicago, and in these fore-and-aft vessels any kind of a night that is blowing fresh we generally keep the booms on one side in order for the safety of the vessel, and sometimes haul her up a couple of
214 points in order to keep the sails drawing; so therefore I could not steer my course. I could not make any better than southwest and southwest by south course.

Q. How often did you pass this point coming up last season?

A. Passed it every trip. I made five trips and a half. Was in Buffalo two months.

Q. Are you able to state the direction and course of the wind every instance you passed there?

A. I don't believe there is a captain on the lakes can do that unless he keeps a perfect log. I'll bet a million of dollars there is not a captain on the lakes that can state that unless he keeps a log. It don't amount to anything unless we have trouble.

Q. Have you talked this matter over with anybody?

A. No, sir.

Q. Within the last two weeks?

A. Have heard some few men speaking something about it, but nothing of importance.

Q. Who have you heard speak about it?

A. I have heard Captain Seamans make some remarks about it.

Q. Who asked you to come here?

A. Captain Seamans.

Q. Had you any conversation with him in reference to the direction of the wind on this night any time previous to this examination?

A. He asked me how I had the wind. I told him exactly how I had it, as near as I can judge, just as I stated it here.

JOHN FRENCH.

215 UNITED STATES OF AMERICA,
Northern District of Illinois:

I, Chas. L. Driesslein, a United States commissioner in and for said district, residing in Chicago, do hereby certify that John French, the witness mentioned in the foregoing deposition, appeared before me and gave his testimony in the case of Winslow vs. Schooner S. S. Osborn, pending in the United States district court for the northern district of Ohio, in admiralty, on the 18th day of April, 1873; that previous to the examination of the said John French as a witness in said case, he was duly sworn by me as such commissioner to testify the truth in relation to the matters in controversy in said cause; that said deposition was taken upon oral interrogatories before me at the office of Messrs. Rae and Mitchell, in said city of Chicago, on said 18th day of April, A. D. 1873; that I reduced to writing the interrogatories propounded to the said witness and his answer thereto, in the order in which the same were proposed and answered, and that after said deposition was so taken by me as aforesaid, the interrogatories and answers thereto were read over by said witness, who thereupon signed and swore to the same, the oath being administered by me as such U. S. commissioner.

Witness my hand at Chicago this 27th day of January, A. D. 1874.

CHAS. L. DRIESSLEIN,
U. S. Commissioner, Northern District of Illinois.

216 U. S. district court within and for the northern district of Ohio.

W. G. WINSLOW AND HEZEKIAH J. WINSLOW, libellants,
against
THE SCHOONER S. S. OSBORN.

The will take notice that on Tuesday, the 8th day of July, A. D. 1873, the above named respondent will take the depositions of Captain Wm. Seamens and W. W. Seamens, sundry witnesses to be used as evidence on the trial of the above-entitled cause, at the office of Prentiss and Varce, No. 4 Rouse Block, in the city of Cleveland, county of Cuyahoga, and State of Ohio, between the hours of 9 o'clock a. m. and 6 o'clock p. m. of said day, and that the taking of the same will be adjourned from day to day, between the same hours, until they are completed.

PRENTISS AND VARCE,
Attorneys for Respondent.

I acknowledge service of the above notice by copy this 7th day of July, 1873, and waive exception as to time.

WILLEY, TERRELL AND SHERMAN,
Att'ys for Plaintiff.

217 *Caption.*

Depositions taken before me, George D. Hinsdale, notary public, within and for the county of Cuyahoga, in the State of Ohio, pursuant to the annexed notice, at the time and place therein specified, to be read in evidence on behalf of respondent in an action pending in the United States district court within and for the northern district of Ohio, in which W. G. Winslow and Hezekiah J. Winslow are libellants, and the schooner S. S. Osborn is respondent. Present, Henry L. Terrell on behalf of the libellants, and Prentiss and Varce on behalf of the respondent.

WILLIAM SEAMANS, of lawful age, being by me first duly sworn as hereto certified, deposes and says as follows:

1st question (by L. PRENTISS). State your name, age, occupation, and place of residence.

A. My name is William Seamans; I am forty-eight years of age; I am a sailor by occupation; and I reside in Geneva, Ohio.

Q. 2. Where and in what capacity were you employed during the month of August, 1872?

A. I was captain of the S. S. Osborn for the whole season of 1872, and am still captain of the Osborn.

Q. 3. Where was the schooner Osborn on or about the 9th day of August last, at the time of the collision with the schooner American Union, and under what circumstances did the said collision occur? Please state all you know about it.

A. We were bound from Escanaba to Erie with iron ore. I
218 forget the hour we left Escanaba. The wind was variable and light, southwest, principally. About five o'clock we had a squall, wind north by northwest. Had wind fresh about an hour. It died away to about a seven or eight knot breeze. It had got to be quite

steady. Went through Poverty Passage about six o'clock. We shaped our course east after we got past Poverty Island. In about half an hour after this the wind commenced hauling ahead, to the northward. I told the man at the wheel to let her come up east by north. We hauled aft our sheets. At seven o'clock we called our men forward and got our sheets flat aft. We continued on that course until we saw Fox light. I thought we were a little to leeward, and told the man at the wheel to see if she wouldn't come a little higher. I told him to let her come up all she would. She come east by north, half north; she headed at that till we made the Beaver light. That was just before eleven o'clock; just on our weather bow, at eleven o'clock the man at the wheel said he could see the light. I told my son that I would go below, and call me at twelve o'clock. I didn't go into the cabin to lay down until twenty minutes past eleven. We had port tacks aboard from seven o'clock until I went below. We were sailing by the wind, and had been doing so from seven o'clock to that time. The wind was to the eastward of north; at all events the wind was east of north; the wind was over our port bow about five points. The course of the wind had been very steady from seven o'clock till this time. My son, Wm. Wesley, was mate, and I left him on deck in charge. Peter Leib, I think, was at the wheel. James O'Neill and Peter Bondy were also on deck;
219 that is my recollection. We had a red and a green light; good ones; green light was on starboard bow, and red light on port bow, in good position and all right. It was a very dark night, misty and cloudy, till about eleven o'clock, or until I turned in. I heard my son sing out "Hard up" and then "Hard down." I went immediately on deck. I could just see a vessel under our bows. Our jib-boom and bow-sprit was gone when I went on deck. Our foremast went after I went on deck. The American Union appeared to be crossing our bows, pretty nearly head on. It shoved the Union, she being light, around so that her bows were a little off our port bow, and then she came along our port side, port sides together. The captain of the Union, or some one on her, sang out "What vessel is that?" Some one on the Osborn replied, "The Osborn." "For God's sake, Seamans," says he, "is that you?" I took it to be the captain of the Union. He said, "Take a line." He then threw a line to me and I made it fast to our timber-head. I turned to get the women off the Osborn on to the Union. This same voice came to my assistance and proved to be the captain of the Union. I supposed it to be him all the time. I told the men to try the pumps. They tried them and found they were not leaking. Captain Parsons came to me and told me that our lights were put out wrong—that his mate had found our green light on our port bow. I told him I guessed not. "We will go and see the men who put them out." Went to the man who put the green light out; first
220 asked him which light he put out. He said he put the green light out. Which bow he put it out on? He said he put it on the starboard bow. Captain Parsons says, "I guess you are mistaken." He said he couldn't be mistaken; that they were the patent lights and you couldn't get them out wrong. Captain Parsons said, "Oh, that's so, is it?" Before we had this conversation about the lights, I took Captain Parsons to the compass to show him how the wind was; says I, "You can see now that the wind is east of north." While we were talking about the lights the stars came out. Now, says I, showing him the north star, "There is a little fellow that can't lie, we'll come right here and get the star to range with your fly; now you see that the wind is east of north." Our attention was then turned to get-

ting his anchor clear of our head-gear. He said he was afraid we would fetch upon the North Fox, but he says, "My small anchor is all right." So he came aboard the Osborn and examined our chart—the chart of the Osborn—to see what kind of holding-ground it was under the North Fox. We went clear of it about a mile. The Union had small lights, probably giving as good light as they were made to give. They were placed on the main-rail, just forward and close to the mizzen rigging, just below the monkey-rail. We measured it, and there was six feet four inches more beam than where the lights were placed. It was just before twelve o'clock by our time when the collision occurred, and were about two to three miles from Beaver light. The wind was the same at the time of the collision as it was when I went below.

221 Sheets flat aft. The Beaver light bore east northeast. The lights of the Union could not be seen from our vessel when coming dead ahead of us. The night was very dark at the time of the collision. The main boom fell out as far as the sheets would allow, fell six feet from the starboard corner of the cabin and nine feet from the monkey-rail. The vessel drifted pretty much right off before the wind. We got no shift of wind till after daylight. We drifted off South Fox light, about four miles off from light as near as I could calculate. The injuries to the Osborn were as follows: It carried away our bowsprit, 'night-heads, port bow was gone back as far as abaft the cat-head down to the plank-sheer; jib-boom, foremast, forecastle, was all torn to pieces; windlass irons all broken; square-sail yard forestays were broken and carried away; starboard bow was torn away as far back as the cat-head; mizzen boom fell across the skylight about a foot from midships, near the wheel.

Q. 4. What was the shape and condition of the sails of the American Union at the time you came on deck, and what sails was she carrying?

A. I could not say how her canvas was trimmed exactly, but her sheets looked to be well off. She was carrying whole foresail, forestay-sail, two jibs, and a single reefed mainsail. I did not see any mizzen on her; don't think there was any.

Q. 5. Did Captain Parsons ask you, immedately after the collision, if you could see the lights on the American Union, and did you say you could?

A. He did not ask me any such question, nor did I tell him I

222 did see them, nor did I tell Captains Parsons I could see them from the quarter of the Osborn.

Q. 6. How long was the Osborn detained for repairs, and where were the repairs done?

A. Repaired in Cleveland, and detained about six weeks. I cannot tell exact time of delay without referring to books.

Cross-examination:

Q. 7. Is the Poverty Island passage to the north'ard or south'ard of the Rock Island passage?

A. North'ard.

Q. 8. What is the course by chart from Rock Island passage past Beaver Island?

A. East three-quarters north by chart. From Poverty Island passage about east ¼ north.

Q. 9. What time of night was it when you say you judged you were a little too far to leeward?

A. I did not look at the time, but think it was about half-past ten.

Q. 10. Who went to wheel at ten o'clock?

A. I think it was Peter Leib. He was at wheel when I went below, and should have remained there till 12, when watch was changed.

Q. 11. Who gave him his orders when he went to the wheel?

A. I don't remember.

Q. 12. Who was at wheel before Leib, and what time did he go to the wheel?

A. I think it was James O'Neill. He went to wheel at eight o'clock. Don't remember who gave him his orders.

Q. 13. When a vessel is sailing full and by the wind, do you say that she is sailing a course?

A. Yes; frequently have a course when sailing full and by.

223 Q. 14. When you want a vessel to sail full and by the wind, what is the order to the man at the wheel,? Is a course given him, or is the order to keep her full and by?

A. If the vessel can make her course sailing full and by, you would tell him to keep her there.

Q. 15. How much water does your vessel draw, light?

A. In the neighborhood of six and a half feet.

Q. 16. How much did your vessel draw that night?

A. About 13 feet; don't know exactly.

Q. 17. Does the vessel sail faster light or loaded?

A. She will sail faster light. Think we had not less than a thousand tons of ore on.

Q. 18. Does the vessel sail faster before or by the wind?

A. Some vessels one way and some another.

Q. 19. From seven to twelve that night, how much of a breeze was there?

A. About seven or eight knots.

Redirect examination:

Q. 20. What orders were given by you to the men at the wheel that night?

A. No orders till we made Fox Island light on our port bow. Orders then given by me to Peter Leib to keep her east by north half north.

WILLIAM SEAMENS.

WILLIAM W. SEAMENS, of lawful age, being by me first duly sworn, deposes and says as follows:

Q. 1st. State your name, age, occupation, and place of residence.

A. My name is William W. Seamens; am twenty years of age; am a sailor; reside at Geneva, Ohio.

Q. 2. Where and in what capacity were you employed during the season of navigation in 1872?

224 A. Was employed on the schooner Osborn, as mate, during the season of 1872.

Q 3. Please state all you know about the collision between the schooner Osborn and the schooner American Union on the night of August ninth, 1872.

A. I went on deck about eight o'clock in the evening. The vessel at that time was going east by north, and until we made the Fox light the wind was about north by east; sheets flat aft. She was close-hauled by the wind, the sheets were flat aft, till collision. The only change made in bearing of the vessel up to collision was in letting her come up a half a point when we made Fox Island light. The wind remained same direction up to time of collision. The wind remained steady. I

remained on deck till after collision. Peter Leib was at the *vessel* from ten to twelve. Peter Bondy was on the lookout at that time. I was all around the deck, looking out for everything. Peter Bondy stood on the gallant forecastle. It was a very dark, cloudy night. Our lights were in their places and burning, the green light on starboard bow and red light on port bow. Made Beaver Island light about eleven o'clock. Leib remained at the wheel till time of collision, but Bondy was not on the lookout till that time. I went up on to the top-gallant forecastle and looked all around for lights, and made sure that he was on the lookout. I told him we could see no lights. I told him we would go and pump her out. We went aft to the pumps and had just got hold ready to pump when James O'Neil said,
225 "What's that?" We all jumped right to leeward, and right ahead we saw a light. I sang out "hard up," and then "hard down." The words were hardly out of my mouth when she struck us. I couldn't tell whether the light I saw was one of those on the side of the vessel or in her cabin—just caught a glimpse of her. She struck us very nearly dead ahead. She tore everything down forward; took away foremast and bowsprit jib-boom. The main boom fell on the cabin about six feet from the starboard corner. O'Neill was just to leeward of the main boom near the pump, facing forward. I guess I was facing forward when I got to the pump—couldn't tell which way Bondy was facing. There was nothing on our vessel to intercept ou view from where we stood. It was probably between one and three minutes from the time Bondy and I left the lookout to the time when we first saw the Union coming into us. I walked back moderately—immediately faced about when we reached the pump; I think we had taken two or three strokes when O'Neill cried out. I noticed where the lights of the American Union were carried, it was just forward of the mizzen rigging. Upon the supposition that the Union was approaching dead ahead, her lights could not have been seen from the deck of the Osborn. I could not tell whether the light we saw at the moment of the collision was one of her side-lights or a light in her cabin. The Union came along our port side after collision. I did not hear any of the conversation between the two captains. Bondy was on the lookout all the
226 time from ten o'clock to the time of the collision, excepting when we went forward to the pumps.

Cross-examination:

Q. 4. What orders did you give the man who went to the wheel at eight o'clock when you went on deck?

A. I did not give him any orders.

Q. 5. What orders did you give to the man who went to the wheel at ten o'clock?

A. I did not give him any orders.

Q. 6. Who was in charge of the watch from eight to twelve?

A. I was.

Q. 7. When you were at the pump, which side of the mainsail was you on?

A. Very nearly directly under it—directly to windward.

Q. 8. Which side of it was Boudy?

A. The same side I was; that is, the windward.

Q. 9. Which side was O'Neill?

A. The leeward side. I think we were all hold of the brakes.

Q. 10. How high above deck is your main boom?

A. At the aft end it swings above the cabin about ten feet from the

deck, and forward about four or five feet; the main boom is sixty-six feet long.

Q. 11. How far aft of the mainmast is the pump?

A. Twenty-five or thirty feet.

Q. 12. How do you know the wind was north by east?

A. By the way the canvas was trimmed.

Q. 13. Did you look at the compass?

A. Yes, sir, repeatedly.

Q. 14. Then why didn't you know by compass which way the wind was?

227 A. I would if I had taken notice; I know just how many points she will work in eleven points.

Q. 15. Could she sail faster before or by the wind?

A. She could sail faster before the wind.

Q. 16. Which bow did you see the Union over?

A. Very nearly dead ahead. She might have been just a little on our starboard bow.

Q. 17. Did you see one or both of her lights?

A. I see just one light.

Q. 18. What was the color of it?

A. Don't know; didn't have time to see.

Q. 19. Don't you know whether it was a bright light or colored light?

A. I don't know.

Q. 20. Was your starboard side injured any?

A. No, sir; it was not.

Redirect examination:

Q. 21. What was the condition of the sails of the American Union at the time of the collision? What shape were they in?

A. Didn't notice how her sails were trimmed at the time of the collision. Between five and ten minutes after the collision, I noticed her mizzen was taken in; her fore gaff-topsail was set.

W. W. SEAMENS.

THE STATE OF OHIO,
Cuyahoga County, ss:

I, George D. Hinsdale, a notary public in and for the county and State aforesaid, duly commissioned and qualified, do hereby certify that the above-named Captain Wm. Seamens and W. W. Seamens

228 were by me first severally sworn to testify the truth, the whole truth, and nothing but the truth, and that the depositions by them respectively subscribed as above set forth were reduced to writing by me in the presence of the witnesses respectively, and were subscribed by the said witnesses in my presence, and were taken at the time and place in the annexed notice specified.

I do further certify that I am not of *council*, attorney, or relative of either party, or otherwise interested in the event of this suit.

In witness whereof I have hereunto set my hand and seal of office this 10th day of July, A. D. 1873.

[SEAL.] GEORGE D. HINSDALE,
Notary Public.

District court of the United States within and for the northern district of Ohio.

THE STATE OF OHIO,
Northern District, ss:

W. G. WINSLOW AND OTHERS, LIBELLANTS,
against
THE SCHOONER S. S. OSBORN ET AL., RESPONDENT and cross-libellant.

The libellants will take notice that on Wednesday the first day of March, A. D. 1876, the above-named respondent and cross-libellant will take the depositions of William Cary sundry witnesses to
229 be used as evidence on the trial of the above-entitled cause at the office of Rae and Mitchell, 20 Major Block, in the city of Chicago, county of Cook and State of Illinois, between the hours of eight o'clock a. m. and six o'clock p. m. of said day, and that the taking of the same will be adjourned from day to day between the same hours until they are completed.

PRENTISS AND VARCE,
Proctors for Respondents.

I acknowledge service of the above notice, by copy, this 25th day of February, 1876.

WILLEY, TERRELL AND SHERMAN,
Proctors for Libellants.

District court of the United States within and for the northern district of Ohio.

WM. G. WINSLOW AND OTHERS, LIBELLANTS,
against
THE SCHOONER S. S. OSBORN ET AL., RESPONDENT and cross-libellant. } In admiralty.

Deposition of Wm. Carey, taken on behalf of the respondent, in pursuance of the annexed notice, before Wm. L. Mitchell, a notary public in and for the city of Chicago, county of Cook and State of Illinois, on the first day of March, 1876, at the office of Rae and Mitchel, in the city of Chicago. Present, Mr. Baldwin, for libellants, and Mr. Condon, proctor for respondents.

Said witness, being first duly sworn, testified as follows:

230 WILLIAM CAREY:

Q. 1. What is your name, age, residence, and occupation?

A. My name is William Carey; am forty-nine years of age; reside in Chicago; am harbor-master at Chicago.

Q. 2. Do you know the parties to this suit or either of them?

A. I know Mr. Winslow.

Q. 3. Do you know the schooner American Union?

A. Yes, sir.

Q. 4. Have you been a master of vessels on the lakes; if so, how long?

A. I have been a master of vessels on the lakes for about eighteen years.

Q. 5. Did you know Captain Wm. Bain, of Buffalo, and late of the schooner Onondago; if so, how long have you known him?

A. About twenty-five years. Yes, sir.

Q. 6. Did you ever examine the schooner American Union with said Bain, for the purpose of ascertaining the visibility of her lights; if so, when and where?

A. Yes. In Illinois Central slip, in Chicago. It is called C slip. It was about the middle of November, 1874.

Q. 7. At whose request was said examination made by you; in behalf of the American Union, or in behalf of the Osborn?

A. I was requested by John Prindeville to go and look at those lights. I do not know in whose behalf I went. I don't think anything was said about it.

Q. 8. From what place, or at what h'ight above the water, if any, was this examination of the lights from ahead of the vessel? Describe fully how you examined them, in your own way.

231 A. I went down to the slip to examine those lights I saw. The first I see the red light from abreast of the vessel; we considered it a good light. I went directly ahead of the vessel; I could see the red light, but not the green light, for the reasons that there were obstructions between me and the green light, piles of coal and lumber on the dock which obstructed the view. I then remarked the vessel was not in a proper position to see their lights. That is about all I know about the matter. I then gave it up.

Q. 9. Where were her lights then placed, and about what distance ahead of her did you stand, when you say you saw her lights as you have last described?

A. The lights were placed either on the main-rail or monkey-rail, abreast of the mizzen rigging. I was about three or four hundred feet ahead of her.

Q. 10. Was Captain Bain standing there with you at that time, and did you stand dead ahead of the vessel?

A. Captain Bain and Mr. Prindiville went closer to the vessel, to those obstructions—the coal pieces. I am of the impression they went on the top of those piles. I did not go, and have said I gave it up when I saw the obstructions. I am most positive they went up there. Bain did, anyway.

Q. 11. About how much was the top of that or those coal piles above the deck of the vessel, if any?

A. It must have been eight or ten feet higher than the deck of the vessel.

Q. 12. When you viewed the vessel from ahead, as you have stated, did you stand in a line, or above or below the level of the deck of the vessel?

A. I should judge I was below the level of the deck of the vessel about two or three feet.

232 Q. 13. Is there any difference in the width of that vessel at the mizzen rigging and at her fore rigging or at midships; if yea, what is that difference?

A. There is a difference between midships and the mizzen rigging. I don't know as there is any difference as to the width at the fore rigging and the mizzen rigging. It is two-and-a-half or three feet wider at midships than at the mizzen rigging. When I say midships I mean the middle part of the vessel.

Q. 14. What difference, if any, is there in the width of this vessel between that at the after part of her fore rigging and the forepart of

her mizzen rigging, and where, in your opinion, is the widest part of this vessel located?

A. About two feet. The widest part is about half-way between the fore rigging and the main rigging.

Q. 15. Did you ever sail the schooner American Union, as master; if yea, when and how long?

A. I sailed her the season of 1866.

Q. 16. About what is the h'ight of her rail at the mizzen rigging above water when light?

A. Between fourteen and fifteen feet.

Q. 17. About what is its height when light at her fore rigging?

A. Between fifteen and sixteen feet.

Q. 18. Where were the lights of the vessel carried on her when you sailed her?

(Objected to.)

A. I carried them on the monkey-rail abreast of the mizzen rigging until such time as there was a forecastle built *built* on deck, then I carried them on the forecastle.

233 Cross-examination by Mr. BALDWIN:

X Q. 1. Which made the most careful and thorough examination of the lights at the time you have spoken of, yourself or Captain Bain?

A. I think Captain Bain did.

Q. 2. He continued his examination after you gave it up, did he?

A. Yes, he did.

Q. 3. Which side of the vessel was the red light on?

A. I think it was on the starboard side.

Q. 4. Did you go around abreast the vessel on the other side?

A. No, sir.

Q. 5. Were the lights directly abreast the mizzen rigging, or might they not have been a little forward of the mizzen rigging?

A. The lights were abreast of the forward part of the mizzen rigging.

Q. 6. When you went ahead of the vessel and saw the red light of vessel, you stood on the dock, did you?

A. I want to correct. I am of the impression it was the red light I saw, but I am not sure I am sure it was on the starboard side, the light I saw; I stood on the dock when I saw the light.

Q. 7. If the green light had been in the same position on the other side that the red light was, would there have been any difficulty in seeing it when standing ahead of the vessel, if it were not for the obstructions on the dock?

(Objected to as incompetent, being a mere supposition.)

A. I think not.

234 Q. 8. Do you remember what Captain Bain climbed upon?

A. I think it was a coal pile.

Q. 9. How high was it above the deck?

A. Fourteen or fifteen feet.

Q. 10. How much ground did it cover?

A. I presume about fifty feet square.

Q. 11. How far from the vessel was it?

A. About three hundred feet.

Q. 12. Didn't Bain go about to take observations from various points on the dock, more so than you did?

A. Yes, sir.

Q. 13. Did Captain Prindiville go about with him, do you recollect? (Objected to as immaterial.)

A. Yes.

Q. 14. You did not make any measurements to ascertain the precise location of the lights, or the vessels dimensions, did you?

A. I did not; there was no measurements made that night.

Q. 15. Where was this forecastle you have spoken of?

A. Right aft of the foremast on deck.

Redirect examination:

Q. 19. Were there any points or places about on a level with the deck of that vessel, and about three hundred feet ahead of her, from which you could test the visibility of her lights at that time?

A. There was to test the starboard light, but not the port light.

Q. 20. Why didn't you test their visibility by standing on that coal pile?

235 (Objected to.)

A. Well, when I found those obstructions ahead of the vessel, I gave the matter up.

Q. 21. Did you or did you not consider that observations taken on that coal pile were a fair test of the visibility of her lights from a point on a level with her decks, say three or four hundred feet ahead of her?

A. No.

Q. 22. You have stated on cross-examination, in substance, that when you saw the light on the starboard side of this vessel, that if there had been no obstructions you think you could have seen the other light. By that answer do you wish to be understood as stating positively that it could be seen at that point if said obstructions were removed?

A. I did not state positively. I believe I could; I am not positive on that.

Cross-examination:

X Q. 16. I understand you mean that you are not positive you could have seen the light, but you believe you could if it had not been obstructed. Is that what you mean?

A. Yes.

Q. 17. May there not have been points on that pile of coal, or on the lumber or other obstructions on the dock, but little if any above the level of the vessel's deck?

(Objected to as immaterial.)

A. There might have been.

W. M. CAREY.

Sworn and subscribed to this 1st day of March, A. D. 1876, before me.

[SEAL.] WM. L. MITCHELL,
Notary Public.

236 STATE OF ILLINOIS,
Cook County, ss:

I, Wm. L. Mitchell, a notary public in and for the city of Chicago, county of Cook and State of Illinois, do hereby certify that Wm. Carey, the witness mentioned in the foregoing deposition, appeared before me, on the first day of March, 1876, at the office of Rae and Mitchell, in the city of Chicago, to give his testimony in the case of W. G. Winslow et al., libellants, against The Schooner S. S. Osborn et al., respondents and cross-libellants, now pending in the United States

district court for the northern district of Ohio; that previous to the examination of the above-named person as witness in said cause, he was sworn by me, as such notary public, to testify to the truth, the whole truth, and nothing but the truth in relation to the matters in controversy in said cause; that said deposition was taken upon oral interrogatories; that I reduced to writing the interrogatories propounded to the said witness, and his answers thereto, in the order in which the same were proposed and answered.

Witness my hand and seal at Chicago, this first day of March, A. D. 1876.

WM. L. MITCHELL,
Notary Public in and for the City of Chicago,
County of Cook and State of Illinois.

237 In the district court of the United States for the northern district of Ohio.

THE STATE OF OHIO,
Cuyahoga County, ss:

WILLIAM G. WINSLOW ET AL., LIBELLANTS,
against
THE SCHOONER S. S. OSBORN (B. O. WILCOX claimant), respondent.
} Depositions taken by agreement.

The said libellants will take notice that on Friday, the 17th day of March, A. D. 1876, the above-named respondent will take the depositions of , sundry witnesses to be used as evidence on the trial of the above-entitled cause, at the office of Prentiss and Varce, in the city of Cleveland, county of Cuyahoga and State of Ohio, between the hours of eight o'clock a. m. and six o'clock p. m. of said day, and that the taking of the same will be adjourned from day to day between the same hours until they are completed.

Caption.

Depositions taken before me, John Biggs, a notary public within and for the county of Cuyahoga, in the State of Ohio, pursuant to agreement, at the time and place therein specified, to be read in evidence, on behalf of the respondent, in an action pending in the dis-
238 trict court of the United States for the northern district of Ohio, in which Wm. G. Winslow and Hezekiah J. Winslow are libellants, and The Schooner S. S. Osborne (B. O. Wilcox, claimant) is respondent. Present, H. L. Terrell, on behalf of the libellants, and Wm. H. Condon, on behalf of the defendants.

WILLIAM SEAMENS, of lawful age, being first duly sworn, as hereto certified, was examined by WM. H. CONDON, and deposes as follows:

Q. 1. Captain, did you have a conversation with Alexander Stewart, mate of the barque Nelson, in the city of Cleveland, immediately after your vessel and that barque arrived here, in regard to how the barque Nelson had the wind on the night of this collision?

A. I simply asked the question how he had the wind coming over? His answer was that he had it ahead, so that he was close-hauled.

Q. 2. When and where did that conversation take place?

A. On the dock, down in the river-bed.

Q. 3. What else was said at that time, if anything?

A. Nothing; only that I told him that I wished he would remember that.

Q. 4. He has stated that after he passed Beaver light that his vessel made a northeast course, and a little before four o'clock she broke off NE. ½ E. and the Skillagalle light then bore around on the weather-bow. Please explain whether that statement is true, or whether he could have made that course, and have the light bear as he said, or not.

A. It is impossible. The northeast course brings him close by
239 Hog Island reef, close along by the white shoals on the starboard hand coming down. The chart will show that.

Q. 5. If he hauled up on a northeast course when one or two miles Beaver Island light, would that bring him on the course that you describe, a northeast course?

A. Yes, sir; it would. Right along just by the starboard hand of these reefs.

Q. 6. If he had an east by north, or east by north one-half north course, and a mile away from Beaver light, how would that bring him with reference to Skillagalle light?

A. I have forgotten the direct course of Skillagalee, but he must make a point to windward or else he don't make his course good by a long ways. I could not tell exactly, but anybody could see very quick on the chart. It brings him clear to leeward of his course, two or three points, as near as I can recollect now; but if a man takes hold of the chart he can tell exactly. If a vessel goes on her course northeast ¾ east she will go a long way to windward.

Q. 7. So that the light would bear on his lee instead of on his weather bow?

A. Yes, sir.

Q. 8. Was there any signal of distress hoisted on the Osborn or the Union the night of the collision, or early the next morning?

A. There was a signal of distress by a propeller at the South Fox dock in the morning, after daylight.

Q. 9. Was there any change made in the position of the mainsail of the Union on that morning, early?

240 A. He jibed his mainsail over and got around on the port tack just at daylight.

Q. 10. Was the breeze at the time of the collision in a sea too strong for such a vessel as the Union to carry all her canvas?

A. No, sir; it was only a seven-knot breeze. I don't think it was too strong.

Q. 11. What canvas would a vessel like the Union carry in such a breeze and sea as there was that night if she was light and by the wind?

A. If she was wanting to get along it would be another thing; she would carry all her fore-and-aft canvas.

Q. 12. If she was sailing with the wind free, what canvas would a vessel carry with such a breeze on such a night?

A. She would be able to carry the whole of it; if she felt so disposed she could carry it.

Q. 13. What do they usually carry when having the wind free and in such a breeze as that was; I mean a "three-and-after?"

A. They generally carry the whole of it in such a breeze.

Q. 14. A vessel is by the wind in such a breeze, and she has her main-

sail single-reefed, and mizzen in, and main and mizzen gaff-topsails stowed away; what would that indicate as to how she had the wind?

A. She would have the wind free, for he could not keep his vessel by the wind with his aftersail in.

Q. 15. Is the mizzen necessary to have on with a vessel by the wind in order to keep her well under control?

A. That has been my experience; it is necessary.

Q. 16. Especially on a "three-and-after?"

241 A. Yes, sir.

Q. 17. What is the course from Sand Bay to Beaver Island light?

A. Well, from the head of the Beaver it is about S. ½ E. It depends on whether you are off or close in. On the shore it is about S. by E., but the chart says S. ¼ E.; but that would put you well off in the bay.

Q. 18. If a vessel was sailing along the beach there from Sand Bay to Beaver Island light with the wind three points free, in what direction must the wind then be blowing?

A. It would be W. by S.; that is, if they were close in; the way the chart is, it makes a little difference; it would throw them around to the westward a little further; it would be either west or a little south of west.

Q. 19. Do you consent that the stenographer shall sign your deposition for you when transcribed?

A. Yes, sir.

Cross-examination waived.

WILLIAM SEAMENS,
Per JOHN BIGGS,
Stenographer.

S. LAMPOH, of lawful age, being by me duly sworn, as hereto certified, deposes and says as follows:

Q. 1. (By WM. H. CONDON, attorney for respondents.) What is your occupation?

A. I am a sailor.

Q. 2. How long have you sailed, and in what capacities?

A. I have sailed for about the neighborhood of 24 or 25 years, and I have been master of vessels about 12 or 13 years; I don't know within a year or a month exactly. I was mate and second mate two years.

242 Q. What vessel did you sail in August, 1872, and in what capacity?

A. I sailed the schooner Fayette Brown, as master, of Cleveland.

Q. Did you know the Osborn and American Union at that time?

A. Yes, sir; I knew both of them.

Q. How did your vessel compare in size with those?

A. She is larger than the Union, and somewhat smaller than the Osborn—not much; very nearly the same.

Q. A "three-and-after"?

A. Yes, sir.

Q. Where were you and the schooner which you sailed on the 9th of August, 1872?

A. In the morning I was in the Straits of Mackinac, and that night at dark, a little after dark, I was going into Green Bay.

Q. Did you see the schooner S. S. Osborn and the barque American Union that evening?

A. The American Union was in company with me that morning, and through the day we got away from her, and at night we lost sight of

her. The S. S. Osborn, we saw her coming out of Green Bay, about six or seven miles to the eastward of the entrance.

Q. What canvas were you carrying at that time?

A. We were carrying everything, squaresail and everything that would pull.

Q. Did you notice what the Osborn was carrying when you passed her, and how her sails were?

A. Yes, sir; she had her large sails on, and was making her small sails; when we passed her she was making her main topsail then.

Q. Did you notice how her sails were trimmed?

243 A. Not particularly; it had been raining, and we did not take notice, and was quite a piece from her. She was to the southward of us.

Q. Where were you about ten o'clock that night?

A. Really I don't know as I could remember positively. I should have to get an hour to go and come on; I was somewhere in the neighborhood of Point Peninsula light-house. It is about 12½ miles from Escanaba to that place.

Q. Did you change your course near that point?

A. Yes, sir; we have to. If I should relate to you the course from the entrance of Green Bay to Escanaba I should bring it out better. From Beaver Island to the entrance of Green Bay you steer west ¾ south; that is the government course; and then WNW. to Point Peninsula, and then north one-half west.

Q. When you got to Point Peninsula what was your course then?

A. North one-half west.

Q. How was the wind then?

A. It was north, such as it had been all the afternoon; shortly after it shifted. It shifted in the afternoon.

Q. How was it after it shifted?

A. When it first shifted it was NW., and then kept about north till I got to Escanaba.

Q. When did you get to Escanaba?

A. It might have been a little before daylight.

Q. Where were you at 12 o'clock?

A. We were beating up to Escanaba. The mate was called then; it was his watch below until then. The mate stayed on deck and I stayed on deck with him.

Q. How long had the wind been north?

A. It is a pretty good while ago; it was sometime in the after-

244 noon when the wind changed. I don't really know what time it was, but I should judge it was somewhere between four and six o'clock in the afternoon that day.

Q. How was the wind from 10 to 12 o'clock that night?

A. It had not shifted much from north during that time.

Q. If it varied any from north, in which direction was it?

A. If there was any variation it was to the eastward, for we were steering WNW. after we took the entrance of Green Bay. I did not see the Union on that afternoon. We were carrying a square-sail then.

Q. How far were you at 12 o'clock from Beaver light?

A. I should think it was 45 or 50 miles.

Q. What kind of breeze was blowing at that time?

A. It was blowing a good fresh breeze, 8 or 9 miles an hour, a good working breeze, although we were carrying all sail such as we carry by the wind. We did not carry the fore gaff-topsail, because in short work we could not shift it. I don't think we were carrying the jib topsail,

but ain't positive, because a light vessel carrying too much head-sail will pay off too much, and you cannot keep them up to the wind.

Q. If such a vessel as yours or the American Union was by the wind a few miles west of Beaver Island light that night with a seven or eight knot breeze, would she have her mizzen in, her mainsail reefed, and her main and mizzen gaff-topsail stowed; and, if not, why not?

A. I could not answer that question; it is according to how she had the wind.

Q. The same as you had the wind.

A. If the wind was three points free she would be steering W.
245 by S., and I was steering WNW., close-hauled. My own vessel won't work that way. She would have to have more after canvas than forward canvas to make her work, for she would not keep up by the wind. She would work under that canvas if the wind was free.

Q. Do not "three-and-afters" when by the wind need a mizzen on?

A. Yes, sir; but my vessel would not work that way. I don't know anything about the American Union though, but I have been on just such vessels as that, and never found one that would work by the wind without her after canvas being set, and if I shortened any I would shorten the forward canvas.

Q. If a "three-and-after" like the American Union in size was sailing in a 7 or 8 knot breeze without her main gaff-topsail, the mizzen and mizzen-gaff topsails being stowed, what would these sails, being off her, indicate with regard to how she had the wind?

A. It would have no indication unless they were torn or split. If they were in good condition, it would indicate that the wind was free, or that she did not want to make a certain place before daylight or the passage before daylight.

Q. Why not get to the passage before daylight?

A. Because there was only one light-house there then at that time, and that is the reason, perhaps, on such a night as that was.

Q. Do you know the course from Sand Bay to Beaver Island light when within a mile or two of the beach?

A. There are two different courses. In the first place, from Sand Bay a great many men would keep off from Beaver Island. I would steer south by east, and then SW. ½ S. You have got to follow
246 around; it is not one straight course from Sand Bay to Beaver Island light; it is a short distance one way, and then a short distance another way. Sand Bay is about from 6 to 7 miles out of the regular course to Chicago or Green Bay. Beaver Island is about at that place, 3½ miles out of the course. Until you get to the island you have got to change your course again as you could not follow it around by steering on one course.

Q. If you were three miles off the land, how would you steer from Sand Bay to Beaver Island light?

A. From Sand Bay to the Beavers is about a direct course for five or six miles. Some steer S. by W. In having the wind free I generally steer S. by E. You go 3½ miles, and then shape your course for Green Bay W. ¾ S.

Q. If a vessel were sailing from Sand Bay toward Beaver light, and were going south to S. by E., and had the wind 3 points free, what would you say the wind was—in what point?

A. I could not say; she could have the wind from either side 3 points free. I don't know which side she had the wind on.

Q. On the port side.

A. Well, then, it would be about north or NNE.

Q. When she was heading south, and had the wind three points free, how was the wind?

A. Well, I judge it was about west, or west by north then; that is, if she had it off the port side.

Cross-examination by Mr. TERRELL:

247 Q. Who was the owner of the Fayette Brown?

A. Alvah Bradley.

Q. Who was the mate?

A. William Price.

Q. Who was second mate?

A. I don't remember now who the second mate was, but I can refer back to the books, if you want to.

Q. Do the books show the names of the crew?

A. Yes, sir; they do.

The foregoing testimony was taken in short-hand by the notary, and signed by the witness.

STEPHEN LAMPOH.

J. H. ANDREWS, of lawful age, being first duly sworn as hereinafter certified, deposes and says as follows:

Question (by Mr. CONDON, respondent's council.) What is your business?

A. Seafaring life, sir.

Q. How long have you followed that business?

A. About thirty-three years, I believe.

Q. How long have you been a master of a vessel upon the lakes?

A. About twenty-five years—somewhere in that neighborhood, I believe.

Q. Do you know the American Union?

A. Yes, sir; the schooner American Union.

Q. Is it usual for such a vessel in a seven or eight knot breeze, with a light sea on when by the wind, to carry all her canvas? Can she do it?

248 A. Well, I should suppose she could carry all sail with a seven-knot breeze. That is all that will stand. In some of these "three-and-afters" the squaresail won't stand by the wind; mine won't, any way, without hauling down almost all the jibs.

Q. In such a vessel by the wind, and in a breeze of that kind, would she have her mizzen in, her mainsail single-reefed, and main and mizzen gaff-topsail stowed; and, if not, why not?

A. I never had anything to do with any ship that I could keep by the wind in that way; not very sharp up, anyhow.

Q. Have you sailed "three-and-afters" on the lakes?

A. Yes, sir; I sailed all kinds that they have here.

Q. If a "three-and-after," like the Union, was sailing in a seven or eight knot breeze without a main-gaff topsail, her mizzen and mizzen-gaff topsail stowed, and her mainsail reefed, what would those sails, being off and in that condition, indicate with regard to how she had the wind?

A. I should think, if she was going through the water and doing anything, she would have the wind free.

Q. Suppose that she was making seven or eight knots, what then?

A. She should have the wind free to do it, and a pretty good breeze, too.

Q. What is the course from Sand Bay to Beaver Island light?

A. You cannot steer one course in steering out of the bay, it is about south ½ east or ¾, perhaps, after you get clear of the land; it depends on where you are; when you get above the first point, you have
249 to haul up to get around to the light, steer to the westward all the time if you are going across the lake there. I steer across there with a fair wind west ½ south; that is with the wind nor'ard.

Q. If a vessel from Sand Bay bound for Beaver light was sailing S. ½ E., and had the wind three points free, and on the port tack, in what point would the wind be?

A. She would have to have the wind from the eastward.

Q. Somewhere about east, would she?

A. Well, then, vessels would go in about six points.

Q. If she had it over the starboard side, how would the wind be?

A. She would be on the starboard tack then, and have the wind from the westward.

Q. How near west, the wind being 3 points free?

A. With this sail that you have just mentioned before and steering S. ½ E. the wind would be a half a point abaft the beam, and that is about all she would do, too. I think under that sail she would not haul up around the island to cross over with that sail on and with that wind.

Q. How would it be if she had her mizzen on, and steering S. ½ E. from Sand Bay, having the wind 3 points free on the starboard side?

A. She would have the wind NW. by W. ½ W., if it was 3 points free.

Q. If she is heading south, and on the wind, it would be five points from south, would not it?

A. If she was on the wind and heading south, the wind SW. by W. would be all that she could do; and she could not do much, then, with all sail on. I never had anything to do with one that would work in five points; it should be 5½ or 6 to have them do
250 anything, if there was any wind or sea on.

Q. If she had a 7 or 8 knot breeze and heading southwest with the wind 3 points free, how is the wind?

A. It must have been pretty well around NW. there, I should think, to do that.

Q. Well, if she was heading south and by the wind, then the wind would be 5 points from south, would not it; 5 or 6 points from south, the wind would be, would not it?

A. Yes, sir; more than that. We usually get under way from Sand Beach Bay with the wind from the nor'ard; we get under way with the after sail in, and as we get up around the island make the after sail. I do, and I have seen other vessels do the same thing. We could not get under way with the wind west without any after sail on.

Q. If you was heading south and sailed within five points of the wind, and had the wind over her starboard side 3 points free, that would give her the wind west, would it not?

A. Yes, sir.

Q. You say most of these "three-and-afters" require six points to work in?

A. I guess they do; mine does. She will do anything in fine weather, but do a good deal better with 6 points.

Q. What vessel is yours?

A. The Redington.

Q. How does she compare in size with the Union?

A. She is not quite as large. She carries 55,000 bushels of corn.

251 Cross-examination by Mr. TERRELL:

Q. When you say the vessel has the wind three points free, what do you mean?

A. 3 points from close-hauling.

Q. You call anything free, then, except close-hauling?

A. Anything is free when you check yards and haul off your sheets.

Redirect examination:

Q. If the wind was N. by E. and you started out of Sand Bay for Beaver light with a three-and-after, and wanted all her sails to draw, how would you head?

A. We would go with the booms on the starboard side, and be on the port tack, steering S. by E.

Q. Would you steer south by east if the wind was north by east, and you wanted all your canvas to draw well, or would you keep up a point or two?

A. I should haul all I could. You can steer with everything full except the jib, and the wind N. by E., coming up along the island, there.

Q. If you had the wind northeast, and had the wind coming over your starboard side, and bound down there, how would you steer so as to have all your canvas draw well, from Sand Bay to Beaver light, and having the booms on the port side?

A. I should calculate to make that course good when I got out clear of the land, and shape the course south ¾ east, or south ½ east. Sometimes there is more deviation of the compass, there than at others; there is also variation there and local attraction, and compasses don't work alike.

252 Q. Is not it usual in three-and-afters bound south, and the wind south, to steer a couple of points from their course, so as to have all their canvas draw?

A. Yes; you cannot do anything with them to make everything pull unless you do; and a little more than a couple of points sometimes. That is the way I go with them; I go on one jib until I get far enough and then jibe over to haul up the other way.

Q. In that case they frequently scandalize the mainsail in a good many vessels?

A. They don't do it in mine; but I have been in vessels where they did that. We dropped the peak sometimes, and that is what we call scandalizing the mainsail nowadays, but men have different ideas about such things.

J. H. ANDREWS,
Per JOHN BIGGS.

The stenographic notes, of which the above is a correct transcript, were signed by the witness.

ALBERT S. OUTIS, of lawful age, being first duly sworn, was examined by Mr. CONGDON, and deposes as follows:

Q. What is your business?

A. Sailor.

Q. How long have you sailed?

A. Eight years, off and on.

Q. Do you remember the collision between the schooners Osborn and American Union, in August, 1872?

A. Yes, sir.

Q. Were you on board of either of these vessels at the time?

A. Yes, sir; on the American Union.

253 Q. What kind of lights did the American Union have at that time?

A. Red and green.

Q. How long had you sailed on her before that collision?

A. About a month. I don't know accurately as to the time.

Q. Did you ever have any trouble with those lights during that time?

A. Yes, sir; frequently the first trip, and we changed stewards; they attended to the lights, and the last steward seemed to have better luck with them than the first steward. On the first trip we had considerable trouble with the lights.

Q. Did you notice how they were at the time of the collision?

A. Yes, sir.

Q. Did you notice their condition?

A. No, sir; I don't remember.

Q. Do you remember when you left Sand Bay that night with your vessel?

A. Yes, sir.

Q. Was there any change in the wind from the time she left Sand Bay until the collision?

A. Not as I recollect. I don't remember that there was any change.

Q. When did you go below after she left Sand Bay?

A. At twelve o'clock. It was supposed to be 12 o'clock or 8 bells.

Q. At that time how were her sheets?

A. They were hauled aft—flat aft—on a wind as well as we could haul them aft by hand; there was no tackles to bouse them down.

Q. Have you not seen them hauled further aft than they were on that occasion?

254 A. Yes, sir; when we worked a vessel on a wind we used a tackle and boused them right down.

Q. You did not do that on this occasion?

A. No, sir.

Q. They were not what you call chock aft, were they?

A. No, sir; they were not supposed to be chock aft. I have seen them haul them aft with tackles when they call them chock aft and boused them right down.

Q. Did you know the man that was supposed to be on the lookout—Mott? You knew him, did you not?

A. Yes, sir; I was acquainted with him on that trip about 8 or 10 days.

Q. Do you know what kind of a man he was to stand on the lookout? Was he attentive to duty on that occasion?

A. I don't know anything about him whatever. I was not the officer. I did not pay any attention as to how he did stand his watch. The mate and him was always on the growl about his watch, but I did not know why it was.

Q. Did you see him while he was on the lookout that night, or afterwards?

A. I saw him afterwards, immediately afterwards. I heard a noise, and the mate sung out to the schooner to keep off, and I rushed out on deck and saw Robert Mott sitting on the end of the windlass with his hand on his head, leaning against the pallbit.

Q. Did you see any blanket around there?
A. No, sir; he took one upon deck when he came to stand his watch, but I did not see it at that time.

255 Cross-examined by Mr. TERRELL:

Q. Where are you living now?
A. At Mentor, sir.
Q. Did you sail last year?
A. Pretty much all the season, sir.
Q. On what vessel?
A. In different ones. The times were so bad that vessels lay up that I was on, and I was obliged to sail in different ones on that account. The William Young was the first one, and then I went in the scow Danbury, and in the D. K. Keys with Captain George Granger.
Q. Who came for you to testify to this?
A. Mr. Ingraham served the summons.
Q. Who talked to you about coming to testify?
A. Nobody.
Q. Have you got the summons?
A. No, sir; I have not got it here.
Q. You testified once already in this case, have you not?
A. Yes, sir; about three years ago I think it is.
Q. Did anybody talk to you about it since?
A. Yes, sir; the men that was in the vessel when we got together would sometimes speak about it.
Q. Who do you mean?
A. The mate is a brother-in-law of mine, and his brother is the second mate; we were raised right together, and my father was there.
Q. You talked with nobody respecting the other side?
A. No, sir.
Q. How long before the collision did you come on deck?
A. I should judge it was about 5 or 10 minutes.

Q. How far were the vessels apart then?
256 A. When I saw the Osborn lights she could not have been more than 3 rods on her port bow dead ahead.
Q. Did it take 5 or 10 minutes to go that 3 rods?
A. I don't swear positively that it was five or ten minutes. I have no means of recol'ecting how long it was. I said I supposed it was that long; it might have been that long or not so long.
Q. Do you suppose it would have taken 5 or 10 minutes to come together when they were three rods apart?
A. I don't know, sir.
Q. When you came up what part of the vessel did you go to?
A. To near the foremast and stood there. My father was yet in the forecastle, and I was very anxious for him to come out of there, and called to him to come out of there, and ran toward the forecastle again, and turned around to see if he was coming out, and stood midway between the foremast and forecastle.
Q. How did Mr. Wilcox come to know that you testified to these facts about the lights and the lookout?
A. I don't know, sir.
Q. How did he find it out?
A. I don't really understand you.
Q. How did Wilcox find out that you testified with respects to the lights of the Union and the lookout of the Union?
A. It was none of my business how he found it out.

Q. You never told it to anybody, I suppose, did you?

A. No, sir.

257 Q. This is the first time you ever mentioned it here this afternoon?

A. Yes, sir.

Redirect examination:

Q. Did not you mention this to Ingraham, your brother-in-law, when you were talking it over with him?

A. No, sir; I never mentioned it to him at any time or place that I recollect of.

ALBERT S. OUTIS.

The stenographic notes were signed by the witness; the above transcript was signed by John Biggs, the stenographer and notary, for the witness, by agreement.

J. BIGGS, *Notary Public.*

E S. OUTIS, of lawful age, being first duly sworn, as hereto certified, was examined by Mr. CONDON, and deposes as follows:

Q. What is your business?

A. I was in my younger days a sailor; in former days a farmer; and sailed more or less.

Q. Do your remember the collision between the S. S. Osborn and the American Union?

A. Yes, sir.

Q. Were you on board of any of these vessels at that time?

A. I was on board the American Union.

Q. Where were you from 9 to 12 o'clock that night?

A. My watch was on the forecastle-deck, on the lookout.

Q. Was there any change in the wind from the time you left Sand Bay until 12 o'clock?

258 A. The wind was fair from the time we left it until we got well around the point, when we came to leave the light upon the quarter abaft the beam it became more ahead, so that we braced up sharp, and, as we sailors call it, flattened aft the sheets.

Q. Did you brace your sheets as flat aft as they could be got?

A. No, sir; I have known them to be bound down with a watch-tackle, and we had not done that. I could not say that there was any need to; the wind was not so strong as that it required a watch-tackle, and we had two or three times at it; and once I spent about ten minutes in the neighborhood of 12 o'clock hauling aft.

Q. Did you notice the lights of the American Union that night, on your own lookout?

A. Well, I had noticed them before and since, but I would not positively say that I saw them on that night more than formerly. I did not steer or go aloft, but had all of the lookout and rousing about, and I looked at the lights from where I stood on the lookout, and could always see one of them from there.

Q. Did you ever have any trouble with her lights?

A. Not that I know of; I did not attend to them, and never put them out but once, and only assisted then in putting them out on the port side. It was a new thing for me and I was never initiated into it.

Q. Who took the lookout after your left it?

A. He went by the name of George Mott, and claimed to live
259 in Michigan, about 12 miles from Detroit. His father used to be a tugman.

Q. Did you notice whether he had anything with him or not, when he came to relieve you on the lookout?

A. Yes, sir; he had a blanket, although I never testified to that before. I said to him, "You are not going to lay down, are you?" and he made me no reply. In fact he did not say that he was going to lay down, but said he was going to wrap up in it. He had no overcoat.

Q. How long had you sailed with him?

A. Well, it was, I think, the 13th of August, and then we were only some four or five days out. It was the 19th, if my memory serves me right.

Q. You had not sailed with him before that trip, had you?

A. Not for 21 years with him. No, sir; I never sailed with any other party that was on board.

Q. Do you know what kind of a man Mott was?

A. No, sir; I am very happy to say that I was in the town of Mentor at that time.

Q. How could you be in both places at the same time; you were on board of this vessel at the time of the collision?

A. Yes, sir; but now I don't think it was on the 19th; I may have been mistaken.

No cross-examination.

E. S. OUTIS,
Per JOHN BIGGS,
Stenographer.

The witness signed the stenographic notes.

J. BIGGS.

260 EDWARD INGRAHAM, of lawful age, being first duly sworn, as hereto certified, was examined by Mr. CONDON, and deposes as follows:

Q. Do you remember the collision between the schooner S. S. Osborn and the American Union, in August, 1872?

A. Yes, sir.

Q. Were you on board of either of those vessels at that time?

A. Yes, sir; I was on the American Union.

Q. About when did you leave Sand Bay, that night?

A. It has been quite a spell since; I don't know. I could not swear to that, sir; I forget the time.

Q. About what time did the collision take place?

A. It was a little after twelve o'clock.

Q. About how long had she been sailing before that occurred?

A. Well, about—I could not tell exactly how long; I don't know what time it was when we got under way, or I could tell what time she had been sailing, but I did not take notice what the time was; it has been so long I forget it.

Q. Did you come on deck when they were getting her under way?

A. Yes, sir.

Q. Did you remain on deck from that time until the collision, or did you go below?

A. I went below, sir, after we got her all cleared up.

Q. Whereabouts was she in reference to Beaver light when you went below; was it in sight then?

261 A. I could not say, sir; it has been so long that I could not say; a fellow forgets such things if he has not got them in his mind all the time.

Q. How was she going when you went below, so far as her sheets and booms indicated?

A. We were by the wind, sir.

Q. When you went below, I mean?

A. I could not say to that either. I don't remember exactly how she was.

Q. Were you on deck at the time of the collision?

A. Yes, sir.

Q. How were the sheets of the vessel at that time?

A. They were what we call chock aft; that is, without using tackles. Sometimes we haul them chock aft by hand, and say that will do.

Q. Did she have tackles for that purpose?

A. We had tackles that we could put on if we liked.

Q. Were they as flat aft as they could be?

A. No; I don't believe they were, because we could put on the tackles and get them a little further aft, but we hauled them what we called chock aft by hand; but if we would put on tackles perhaps we would get a little more and have a bigger purchase on them.

Q. Do you know Mott, who was said to be on the lookout at the time of the collision?

A. Yes, sir.

Q. Did you see him when he was on the lookout or when he came off it?

A. I saw him on the lookout; that is all.

Q. Did he have anything with him when he went on the lookout that you noticed?

262 A. It was dark; he had something, perhaps a coat or a blanket, but I would not swear whether is was a coat or a blanket. I would not be sure whether it was a blanket or a coat.

Q. Did you notice any change in the wind from its direction from what it was when you came on deck from what it was when you went below?

A. No, sir. I don't think now what it was, it has been so long ago.

Q. What kind of lights did the Union have that night?

A. She carries a green and a red light.

Q. Did you ever have any trouble with them while you were on board of her?

A. Sometimes we did and sometimes we did not. Sometimes they burned real nice and other nights they would bother us a little. Sometimes they would flash up and smoke up and go out, or something of that kind, and sometimes they would be good lights, some nights they were not so good.

Q. Do you know what kind of a man Mott was for a lookout?

A. Well, I really was not much acquainted with him, but I don't think he was to be trusted to keep a lookout.

Q. Why?

A. Well, because he is somewhat like myself; he thinks a little too much of sleep.

Cross-examination by Mr. TERRELL:

Q. How long have you sailed with Mott?

263 A. I had not sailed with him very long. He was in the Union with us. I was not much acquainted with him, but only for that trip.

Q. You were out about 4 days; four or five days at that time?

A. Yes, sir. Let me see how long, perhaps it was a little longer. I

won't say for sure how long we had been out; we had not been out very long anyway.

EDWARD INGRAHAM,
Per JOHN BIGGS, *Stenographer.*

The stenographic notes were signed by the witness.

J. BIGGS.

CHARLES O. INGRAHAM, of lawful age, being first duly sworn, as hereto certified, was examined by Mr. CONDON, and deposes as follows:

Q. State your name, age, residence, and occupation.

A. My name is Charles O. Ingraham. I am 34 years of age. I reside at South Haven, in Michigan, and my business a sailor.

Q. Do you remember the collision between the American Union and the schooner S. S. Osborn in August, 1872?

A. Yes, sir; I do.

Q. Were you on board of either of these vessels; and, if so, on which?

A. I was on board of the American Union.

Q. In what capacity?

A. As first mate.

264 Q. Do you remember about at what time on that evening the Union got under way from Sand Bay, or the time she left Sand Bay?

A. It was about 9 o'clock from my recollection now, it is so long ago that I forget, but it was somewhere about that.

Q. Was there any change in the wind from that time until the collision?

A. I don't think there was.

Q. How were the sheets of the American Union at the time of the collision?

A. They were aft.

Q. Were they what you call chock aft, or merely aft?

A. They were merely aft, sir. If we was on the lake, or working through the straits, or wanting to do sharp work we would get them closer.

Q. Did you ever have any trouble with the lights of the Union while you were on her?

A. Yes, sir; more or less; sometimes they would fail us and go out.

Q. How was it with the lights in windy weather?

A. They bothered us considerable in what I call heavy weather.

Q. Do you know Mott; he was acting as lookout, or was said to be at the time of the collision?

A. We had a man of that name, sir.

Q. Where were you when you first saw the green light of the approaching vessel?

A. I was on our quarter, our port quarter.

Q. Did you see the lookout shortly after that?

A. I did, sir.

265 Q. State where he was, and how you found him, and what you did before that.

A. A few minutes before I saw the light, I was on deck and saw the outlook leaning against the staysail boom, and I spoke some pretty harsh words to him and he was a little abusive, so I helped him to get down off the top-gallant forecastle.

Q. Describe his position when you saw him there.

A. He acted as though he was a little tired and did not care if he

kept the outlook or not. He was leaning against the staysail boom and was resting himself with his hand to his head.

Q. How near were you to him when you saw him in that position?

A. I cannot tell exactly; when I first saw him I was at the foremast.

Q. You went up to him and took hold of him?

A. I did, sir.

Q. How was his head and face at that time, how was it inclined?

A. He was looking forward and downward.

Q. Do you know whether he was awake or not at that time?

A. I could not possibly swear that the man was asleep or that he was awake. If he was awake it was pretty hard for him to hear.

Q. What did you do forward there, before you went up to him and saw him in that way?

A. I hollered pretty loud to the Osborn to make them hear.

Q. Did you notice whether the outlook had anything with him at that time?

266 A. He did have something with him, sir; I cannot say positively whether it was a blanket or a quilt, or what it was; he had something with him, but I cannot swear whether it was a quilt or blanket, or it might have been a bed-tick for all I know.

Q. You testified on behalf of the American Union, did you not?

A. Yes, sir.

Q. Since this collision occurred have you received any money from the captain of the American Union or her owners, or have you been promised anything?

A. I received a little money from the owners. I was in Buffalo last summer when Mr. Winslow told me to come to Cleveland and he would pay me for it, and I came up here. I was here two days, or at least the biggest part of two days. He was to give me six dollars a day. They were building a big steam-barge over here. He took me in his buggy and drove me up to the office and he told me that he could not do anything with me, and so I went on home.

Q. How much per day did he pay you for your time?

A. Six dollars per day.

Q. What were you doing there?

A. I was idle at that time, sir. I had left the barque Munerca in Buffalo. I was mate of her.

Q. Did Parsons, the master of the American Union, after the collision promise you anything on account of the collision?

A. Yes, sir; he said he would buy me as good a suit of clothes as we could get in Cleveland immediately after the collision had oc-

267 curred, when we had got through our hurry.

Cross-examination by Mr. TERRELL:

Q. You said you hollered to this lookout two or three times and he did not seem to hear you. You said you hollered to him two or three times?

A. No, sir; I said I hollered to the Osborn.

Q. You did not seem to disturb him much?

A. No, sir.

Q. That was after you saw the lights of the Osborn?

A. Yes, sir.

Q. You had not heard him say anything preparatory or previous to that time to indicate that he was awake or attending to business at the time of the collision; when you made the lights of the Osborn you had not heard anything from him at all?

A. No, sir.
Q. He did not report the lights or anything?
A. I forget whether he reported the lights or not.
Q. If he was asleep he did not, did he?
A. No, sir.
Q. Did you hear anything from him at all, or not?
A. I cannot answer that at all, for I forget.
Q. You described his position as leaning on his hand with his head forward and looking down, and you say you don't know whether he was asleep or not?
A. He did not say anything when I was forward, but I don't believe the man reported the light, and yet I forget whether he did or not.
Q. How came you here to-day?
A. I came down to see father; he wrote to me a little while ago.
268 Q. You lived at South Haven, Michigan.
A. Yes, sir.
Q. After you got here who came to talk to you about this matter?
A. Nobody, sir.
Q. How did Mr. Wilcox, or any one representing him, know that you would testify to those facts that you now testify to?
A. I don't know.
Q. Did you ever mention them to any one?
A. No, sir.
Q. Is this the first time you mentioned them to anybody since the collision?
A. Not since last summer.
Q. Then you did not mention these facts to anybody since the collision until this afternoon?
A. I believe I did tell my brother of it; the one that is in Painesville now. I guess I did tell him once about it.
Q. Does Mr. Wilcox live in Painesville?
A. Yes, sir.
Q. What is your brother's business?
A. He owns a scow and sails her.
Q. Has he any interest with Wilcox in any vessels?
A. I don't think he has, sir.
Q. You never had any correspondence with respect to this with Wilcox?
A. No, sir.
Q. When do you say you think you mentioned it to your brother Dan?
269 A. I think it is a year ago last summer. I was mate with him in the Hazard, and we got talking about it, and he said "You had some trouble right along here," and I said "Yes, we had some trouble right over there somewhere." I cannot say that I told him about it. I may not have told him the same as I told you.
Q. Do you remember telling him about this lookout having a blanket with him?
A. My opinion is now that I did tell Dan that the outlook was asleep.
Q. Do you swear to that now, that he was asleep?
A. I say that he was either asleep or else tired.

C. O. INGRAHAM,
Per JOHN BIGGS,
Stenographer.

The short-hand notes were signed by the witness in my presence.
J. BIGGS.

THE STATE OF OHIO,
Cuyahoga County, ss:

I, John Biggs, a notary public in and for the county and State aforesaid, duly commissioned and qualified, do hereby certify that the above named Wm. Seamans, Stephen Lampot, J. H. Andrews, Albert S. Outis, E. S. Outis, Ed. Ingraham, and Charles O. Ingraham were by me first severally sworn to testify the truth, the whole truth, and nothing but the truth, and that the depositions by them respectively subscribed as above set forth were reduced to writing by myself, I being a proper person and not interested in the suit, in my presence
270 and in the *the* presence of the witnesses respectively, and were subscribed by said witnesses in my presence, and were taken at the time and place in the annexed notice specified, and continued from day to day as above set forth.

I do further certify that I am not councel, attorney, or relative of either party or otherwise interested in the event of this suit.

In witness whereof I have hereunto set my hand and seal of office this seventeenth day of March, A. D. 1876.

[SEAL.] JOHN BIGGS,
Notary Public.

United States district court of the northern district of Ohio.

THE STATE OF OHIO,
Cuyahoga County, ss:

WILLIAM G. WINSLOW ET AL., LIBELLANTS,
against
SCHOONER S. S. OSBORN, DEFENDANT.

The libellants will take notice that on Wednesday, the 29th day of March, A. D. 1876, the above-named defendant will take the deposition of William Price, of Cleveland, Ohio, sundry witnesses, to be used as evidence in the trial of the above-entitled cause, at the office
271 of Prentiss and Varce, No. 4 Rouse block, in the city of Cleveland, county of Cuyahoga, and State of Ohio, between the hours of 8 o'clock a. m. and 6 o'clock p. m. of said day, and that the taking of the same will be adjourned from day to day between the same hours until they are completed.

PRENTISS AND VARCE,
Proctors for Defendants.

I acknowledge service of the above notice by copy this 24th day of March, 1876.

WILLEY, TERRELL AND SHERMAN,
Proctors for Libellants.

Depositions taken before me, a notary public within and for the county of Cuyahoga, in the State of Ohio, pursuant to the annexed notice, at the time and place therein specified, to be read in evidence on behalf of defendant in an action pending in the district court of the United States in and for the northern district of Ohio, in which William G. Winslow and Hezekiah J. Winslow are libellants and the Schooner S. S. Osborn (B. O. Wilcox, claimant,) defendant. Present, H. L. Terrell, on behalf of libellants, and C. M. Varce, on behalf of defendants.

WILLIAM PRICE, of lawful age, being by me first duly sworn as hereto certified, deposes and says as follows:

Q. State your name, age, occupation, and place of residence.

272 A. My name is William Price; am 30 years of age; am a seaman by occupation; have sailed most of the time since I was 12 years of age. I reside in Cleveland, Cuyahoga County, Ohio.

2. Q. Where were you in 1872, during the month of August?

A. On the Fayette Brown, as mate.

3. Q. Whereabouts were you and your vessel on the day in which the collision between the schooner S. S. Osborn and American Union occurred?

A. We were then on the passage from Beaver Island to Green Bay.

4. Q. When, if at all during that day, did you see the schooner S. S. Osborn, and where?

A. In Poverty Passage. She was comming out Poverty Passage and we were going in Summer Passage just before dark.

5. Q. How did you know it to be the Osborn?

A. By the build of the vessel and by asking for information after we got to Escanaba.

6. Q. What canvas was your vessel then carrying?

A. Plain-sails and square-sail. Plain sail means all the fore-and-aft sail. We could just lay our course from the passage to Point Peninsula, and from there we had to beat.

7. Q. What canvas was the Osborn then carrying?

A. All her fore-and-aft sails, including her gaff and topsails.

8 Q. How was the wind at the time you saw the Osborn?

A. North by east.

9. Q. How did you ascertain this?

A. By taking the bearings of the compass at the fly and masthead.

273 10. Q. What change, if any, was there in the wind during the night?

A. None during that night; none at all until morning, and what occurred after that I can't tell. Between 12 and 1 we took in our square-sail. We got to Escanaba about daylight.

11. Q. How do you identify this occasion as being the day of the collision between the schooner S. S. Osborn and the American Union?

A. When we got to Escanaba we enquired what vessels had left, and were told that the schooner Osborn and the bark Nelson had left that day. The day after we arrived the American Union came into Escanaba damaged forward; her mate told us that they had a collision with the Osborn, and I lent them some spare headsails.

12. Q. How was the Osborn's canvas when you saw her in the passage?

A. It was pretty well aft. It was remarked on our vessel that if it came on to blow very hard that the Osborn would have a pretty tough time of it to make her course.

13. Q. Did you see the barque Nelson on the same day?

A. Yes, at the same time; a long way to leeward. She looked to be making Rock Island Passage.

14. Q. Which can sail the closer to the wind, a fore-and-aft or a square rigged vessel?

A. A fore-and-aft.

15. Q. How much closer?

A. A couple of points with the average of vessels; some will do better than others.

16. Q. How do you account for the Nelson's taking Rock
274 Passage instead of Poverty Passage?

A. I should judge that the wind was too close for her; she would have to beat to make Poverty Passage, and, night coming on, she wanted to get out into the lake while daylight lasted.

17. Q. When did you see the Osborn next?

A. At Cleveland, on our arrival here.

18. Q. Was she damaged?

A. Yes; her bow was stove in, foremast gone, and other damage.

19. Q. Are you able to state the day of the month on which this collison occurred?

A. No, sir; but I know it was in 1872.

Cross-examination waived by libellant's proctor, H. L. Terrell.

Certificate to depositions.

STATE OF OHIO,
Cuyahoga County, ss:

I, W. J. Hudson, a notary public in and for the county and State aforesaid, duly commissioned and qualified, do hereby certify that the above-named William Price was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, and that the deposition by him subscribed as above set forth was reduced to writing by me in the presence of the witness, and was subscribed by the said witness in my presence, and was taken at the time and place in the annexed notice specified.

275 I do further certify that I am not counsel, attorney, or relative of either party, or otherwise interested in the event of this suit.

In witness whereof I have hereunto set my hand and official seal this 29th day of March, A. D. 1876.

[SEAL.]

W. J. HUDSON,
Notary Public.

In the district court of the United States for the northern district of Ohio.

W. G. WINSLOW ET AL.
vs.
THE SCHOONER S. S. OSBORN ET AL. } In admiralty. April term, A. D. 1877.

Willey, Terrell and Sherman.
Prentiss and Varce and Condon.

Present on the part of the libellant H. L. Terrell, of Cleveland, Ohio.

Present on the part of respondent Loren Prentiss, of Cleveland, Ohio, and William H. Condon, of Chicago, Ill.

A. Kippard, stenographer, Cleveland, Ohio.

TUESDAY, *May 1st*, 1877.

This day came the parties and their attorneys in the above-entitled cause and proceeded to the trial of the same, as follows:

After a statement of the case by counsel for the respective parties, coun-
276 cel for libellant read in evidence the depositions of the following-named witnesses: Robert Parsons, Charles O. Ingraham, Edward Ingraham, E. S. Outis, Albert Outis, George Magley, Frank Wicks, Thomas Gilkison, Albert Landreth, Alexander Stewart, John McCoy, Thomas Banner, Frank Debbige, William Bayne, L. S. Rum-

mage, Edwin M. Perkins, Maurice Barrett, Christopher Moore, and John P. Cotton.

Libellant rests.

Defence.

Council for respondent read in evidence the depositions of the following-named witnesses: C. V. Vogler, Capt. John Collins, James Bowen, W. W. Bates, John G. Keith, William Seaman, and John Tice.

Adjourned until Thursday, May 3rd, 1877, at 9 a. m.

THURSDAY, *May 3rd*, 1877—9 a. m.

Council for respondent read in evidence the deposition of William Carey.

Mrs. MAGGIE PAYNE, as witness called on behalf of the respondent, being first duly sworn, was examined in chief by Mr. CONDON, and testified as follows:

Q. Mrs. Payne, where do you reside?

A. Painesville, Ohio.

Q. How long have you lived there?

A. Twenty years.

277 Q. Do you you know Mr. B. O. Wilcox?

A. Yes, sir.

Q. How long have you known him?

A. Fifteen years perhaps. It is a long time.

Q. Are you acquainted with Mrs. Wilcox?

A. Yes, sir.

Q. Were you ever on board the schooner S. S. Osborn, in the summer of 1872?

A. Yes, sir.

Q. During what month?

A. During the latter part of July and first of August.

Q. What other ladies were on board of her with you?

A. Mrs. Wilcox and her daughter, Mrs. Loomis, and Mrs. Smith.

Q. Where are those ladies now?

A. Mrs. Wilcox and Mrs. Loomis are here, Miss. Wilcox is dead, and Mrs. Smith is in Painesville.

Q. Miss Wilcox was the daughter of Mrs Wilcox?

A. Yes, sir; she is dead.

Q. Were you on board of the vessel the night of the 9th and 10th of August, when there was a coillsion between her and the American Union?

A. Yes, sir.

Q. Where were you that evening between seven and eight o'clock?

A. Most of the time sitting on the deck, perhaps in a few moments, and remained out on deck.

Q. Whereabouts did you sit on deck?

A. Near the cabin, between the cabin door and kitchen door. There was a porch overhead.

Q. Little awning?

A. Yes, sir.

278 Q. The awning was a part of the cabin?

A. Yes, sir; the roof.

Q. What kind of weather was it about between seven and nine o'clock that night; did it rain any, do you remember?

A. I do not recollect exactly what time it cleared off—stopped raining. It had been raining?

Q. Well, did you remain on deck long that evening?

A. Yes, sir.

Q. From about 9 o'clock were you on deck all the time for quite a while?

A. Yes, sir.

Q. From nine to a little after eleven where were you?

A. I was on deck.

Q. Sitting there in front of the cabin?

A. Yes, sir; same place.

Q. What kind of a night was it during that time, whether it was clear and starlight or dark?

A. It was very dark; it had been storming very hard in the early part of the evening, and it was very dark at that time.

Q. What other ladies were out there on deck with you, if any?

A. Mrs. Loomis was with me.

Q. Did you notice the position of the main boom of the vessel, that is the stick of timber at which the mainsail is made fast, the lower piece, the main boom?

A. The stick that came toward us, that lay this way (indicating)?

Q. Yes, coming toward you from the mainmast; did you no-
279 tice its position, whether it was across the vessel's rail?

A. No, sir; it was not. It did not stand out this way over the rail (indicating).

Q. How was it with the mainmast and sail; did you sit right back of the mainmast?

A. Yes, sir; it was very near over our heads. It might have been a foot perhaps beyond the centre where we sat, but it was very nearly straight with us, where we sat.

Q. How long had it been so. This is the mainboom (indicating on model); you sat, if I understand you, right here in front of the cabin (indicating)?

A. Yes, sir; one came up through the cabin, I think (referring to mast).

Q. The mizzen on the Osborn came through the cabin?

A. Yes, sir; as I remember it.

Q. Where did you sit with reference to the cabin?

A. If they call this the cabin right here in the centre (indicating).

Q. There was an awning you say over the cabin?

A. The kitchen came up here (indicating) and the cabin where we sat came here (indicating) and in between there was a niche, and we sat there (indicating), one door came this way (ind.) and the other came this way (ind.) and the roof came over the hall.

Q. The mainmast was some distance ahead of you, was it not?

A. Yes, sir.

Q. The mainboom I referred to is this (ind.)?

A. Yes, sir.

Q. Suppose you to sit here and the cabin to extend to here, de-
280 scribe how that main boom stood?

A. Very nearly straight. In that position (ind.) I sat on this side of the porch (ind.) and Mrs. Loomis on the other side.

Q. On the right-hand side?

A. Yes, sir; I was on the right-hand side.

Q. What was you doing on the deck?

A. Looking at the storm when it was storming, and afterwards we were sitting and talking.

Q. Any waves of the sea come over the vessel while you sat there?

A. Yes, sir; quite a heavy sea.

Q. If any spray or sea came on deck, where did it come on?

A. We noticed it mostly in the forward parts of the boat. The spray dashed up.

Q. About how far forward?

A. Clear at the end.

Q. At the bow of the boat?

A. Yes, sir.

Q. On which side of the vessel did it come over, the right-hand side or left-hand side?

A. The left-hand side as we sat facing forward.

Q. Was there anything about that spray that attracted your attention?

A. It looked red, that is the way we noticed it.

Q. While you sat there, for what length of time did the spray come over there red?

A. As I remember most of the time, we were speaking of it, I had never seen anything like it before.

Q. And you talked of it, did you?

281 A. Yes, sir; Mrs. Loomis and I spoke of it. I think all the others too—some of them.

Q. Were you on deck immediately after the collision?

A. Yes, sir.

Q. Where did you go; did you remain on that vessel, or go on to the Union?

A. We went on to the Union.

Q. Did you go into the cabin when you got on to the Union?

A. Yes, sir.

Q. Did you notice what time it was when you got there by the clock?

A. It was after twelve by their clock; their time was faster than ours, as I remember.

Q. When you left your vessel and went on to the American Union was it light or dark? What kind of a night was it then?

A. It was a dark night when we went on. It cleared up in a few hours.

Q. How was it in regard to distinguishing people on deck at that time?

A. It was very dark. I think I should not have been able to have told any one. Could hardly see the side of the American Union when we got over at that time.

Q. Were you a friend of Mrs. Wilcox's daughter?

A. Yes, sir; neighbors of ours.

Q. She was sick at that time?

A. No, sir; she was not sick until her last sickness; she had not been well; some of the ladies were sea-sick; she was not feeling well and went to bed.

Q. You was traveling as company for her, were you?

282 A. Yes, sir; and for her mother, all together.

Q. Did you notice immediately after the collision the position of that main boom, how was it standing, or had it settled down?

A. It had settled down on the roof of the cabin.

Q. The extreme end of it extended over the roof of the cabin?
A. I could not say.
Q. Well, on to the main roof?
A. I think it was on to the cabin roof, and the end of it I do not remember.
Q. As it lay there what was its position in regard to the vessel, how did it settle down.
A. It fell where it had been through the evening; same position.
Q. Did you notice whether it had been moved any after the collision?
A. I do not think it had. I went back in a few hours on to the boat and it was still there.
Q. In the morning did you notice any change in its position?
A. No, sir.
Q. It was almost straight with the mast?
A. Yes, sir.

No cross-examination.

Mrs. CYNTHIA LOOMIS, a witness called on behalf of the respondent, being first duly sworn, was examined in chief by Mr. CONDON, and testified as follows:

Q. Where do you reside?
283 A. In Painesville.
Q. How long have you lived there?
A. Nearly 30 years.
Q. Do you know Mrs. B. O. Wilcox?
A. Yes, sir.
Q. Did you know her daughter during her life-time?
A. Yes, sir.
Q. Were you on board the schooner S. S. Osborn on the night of the 9th of August, 1872, when she had a collision with the American Union?
A. Yes, sir.
Q. What kind of weather prevailed during the evening, say from seven o'clock to nine o'clock?
A. It was dark and stormy.
Q. Did it rain any?
A. It rained in the early part of the evening. I think it stopped after a short time, but it had been a rainy evening.
Q. Were you on deck during that evening?
A. Yes, sir.
Q. How much of the time?
A. Well, a good portion of the time.
Q. Where were you while on deck? Did you remain in any particular place?
A. Yes, sir; all the time sitting the projecting roof of the cabin, between the kitchen and the cabin door.
Q. Were you back of the front part of the cabin as you sat in that niche, or were you on a line with the front part of the cabin?
A. We were under the roof. The cabin projected upon one
284 side and the kitchen upon the other and there was a niche between and we sat in that niche, under the shelter.
Q. When did you go there that evening and stay quite a while?
A. I do not remember the time we went out; some time during the evening.
Q. Do you remember when you had tea that evening?

A. Yes, sir; we had tea usually about six or half-past six, I think.
Q. About the same time that night as other nights?
A. Yes, sir; as usual.
Q. And after tea you went on deck?
A. I was in and out of the cabin.
Q. Did you notice while you sat there during that evening the position of the main boom?
A. Yes, sir.
Q. What was its position with reference to the mainmast?
A. It was nearly, as they call it, "flat aft." It was remarked at the time that the boom was nearly "flat aft."
Q. In your language how was it?
A. It was nearly straight back from the mainmast; just a little toward the right as we stood there.
Q. Was that niche in the cabin about the centre of the vessel?
A. Yes, sir.
Q. As you sat there did any part of the boom project over where you was sitting?
A. Yes, sir.
Q. About how wide was the place in which you and the other lady sat?
A. I should think about the width of this space (indicating).
285 Q. Six or eight feet?
A. I should think it was about six or eight feet; I do not know the distance exactly, I should judge it was about that.
Q. Was the mainmast about in the centre of that distance?
A. Yes, sir; about the centre.
Q. And the main-boom as it extended over your head was a little to the right of you, or of that space?
A. A little to the right of the centre, I should think, of the vessel.
Q. How was it with reference to that space then; as it passed over the cabin, did it pass over that space in which you sat?
A. Yes, sir.
Q. Was there any change made in the position of that boom while you were on deck that evening?
A. I do not remember of any change being made; I think there was not.
Q. If the crew had come aft there and changed the boom, the position of it, hauled it in or let it out over the rail, would you have noticed it?
A. I think I should; I am quite positive it was there all the time.
Q. How late did you remain on deck that evening?
A. I think it must have been eleven before we went into the cabin.
Q. Was there any spray or sea came on to that vessel while you were there that evening?
A. We saw the spray at the bow of the boat.
Q. The right bow or left?
A. On the left bow as we sat there, I sat on the left side of this
286 niche, as I faced the bow of the boat the spray came up on the left side.
Q. Did you notice anything particular about it?
A. Yes, sir; I noticed the light from the lantern, the light that was carried on the bow of the boat, the red light threw its reflection upon that spray, and I remarked how beautiful it was.
Q. Did it appear to color the spray?
A. Yes, sir; it colored the spray, made it look rosy.

Q. Could you see the light itself?
A. No, sir; only the reflection.
Q. Did you remark?
A. Yes, sir; I spoke of it.
Q. To whom?
A. To Mrs. Payne; I do not know but I called the others. It was so beautiful, something I had never seen before.
Q. When you went below what kind of a night was it; do you remember?
A. It was dark; it was cloudy and quite dark.
Q. Did you see any stars?
A. No, sir; I do not remember of seeing any stars. It was dark.
Q. Did you notice the position of that main-boom after the collision had taken place?
A. Yes, sir.
Q. Had its position changed any?
A. No, it had not changed.
Q. Was the main-boom still hanging, or had it settled down on the cabin?
A. It had settled down; all of the rigging before the mainmast was gone.
287 Q. One of the masts fell?
A. The foremast fell.
Q. Where did it fall?
A. On the deck, and it fell against the mainmast and broke it in two; fell against the cross-trees; I know that it broke in two as it fell.
Q. That is the foremast broke in two?
A. Yes, sir.
Q. Did it lay on the deck?
A. Yes, sir.
Q. Was the position of the main-boom changed any from the time of the collision until next morning?
A. No, sir; not to my knowledge.
Q. You noticed it in the morning?
A. Yes, sir; I noticed it.
Q. It was in the same position?
A. Yes, sir.
Q. Were you on deck shortly after the collision?
A. Immediately after the collision.
Q. How long did you remain on deck?
A. But a very few minutes; we thought the boat was going right down.
Q. Did you look around when you came on deck?
A. Yes, sir.
Q. Did you find the weather bright and clear?
A. No, sir; we found it dark; we found a boat alongside of us. It was so dark that at first I did not distinguish that boat; I called to know what was the matter, and they said a boat had run into us.
Q. The vessels had not been lashed together at that time?
A. No, sir; they were fastened together by the rigging.
288 Q. Was it light enough on deck right after the collision when you went on deck to distinguish people's countenances.
A. No, sir, it was not; I say I could not at first distinguish that boat that was alongside of us, it was so dark.
Q. Where were the Osborn and the Union in relation to the islands in the morning

A. We seen some islands.
Q. Large islands? Did you hear what island it was?
A. Yes, sir; I think they said they were the Fox Islands.
Q. Did you see any part of the island, or any object on the island?
A. Yes, sir.
Q. What did you see?
A. I saw a propeller lying there at the island.
Q. Was that the southern part of the island?
A. I cannot tell you; I was completely lost as far as the points of the compass are concerned.
Q. Could you easily distinguish that it was a propeller?
A. Yes, sir, very easily; we set up a signal of distress and expected they would answer it, but they did not.
Q. Who was on deck with you most of the time?
A. During the evening?
Q. Yes.
A. Mrs. Payne.
Q. Had you ever taken a trip on the water before?
A. No, sir; not a long one; never on a trip for pleasure before.
Q. How long had you been on that trip?
289 A. About two weeks. We had lain at Escanaba some time waiting for a boat.
Q. Did the vessels lay motionless together during the night, or was there any thumping?
A. O, they thumped. That made me sick.
Q. Was there considerable sea?
A. It seemed to me as though there was. I was badly frightened at first. I thought, of course, both boats would go down at once. It seemed to me as though the heavy boat was certainly crushing the sides of the light boat and we would all go down.
No cross-examination.

Mrs. LIDIA WILCOX, a witness called on behalf of the respondent, being first duly sworn, was examined in chief by Mr. CONDON, and testified as follows:
Q. 1. What is your name?
A. Lidia Wilcox.
Q. 2. Where do you reside?
A. Painesville.
Q. 3. How long have you lived there?
A. We lived in the village about fifteen years. I have always lived in the town.
Q. 4. Your husband was part owner of the schooner Osborn, in August, 1872?
A. Yes, sir.
Q. 5. Were you on board the schooner S. S. Osborn on the night of the 9th of August, 1872?
A. I was.
Q. 6. Name the other ladies that were there with you at that time?
290 A. Mrs. Loomis, Mrs. Payne, Mrs. Estella Smith, and my daughter.
Q. 7. Were you on deck any during that evening?
A. Yes, sir; some of the time. I was sea-sick some and had laid down until I got over it, and then I went out on deck.
Q. 8. Was it raining during that evening?

A. Yes, sir; we had a rain storm in the afternoon. It had rained some during that evening.

Q. 9. It had been raining during the evening?

A. Yes, sir; had a rain storm during the afternoon.

Q. 10. Was it clear, or dark and cloudy that night?

A. It was very dark and cloudy.

Q. 11. Had you ever been at sea before?

A. Yes, sir; it was the fifth summer I had been on the Osborn. I had been twice before to Lake Superior, and once to Oswego. It was was my fifth trip on the Osborn.

Q. 12. Did you notice after supper how the main-boom, which is this boom (indicating), laid with reference to the mainmast?

A. Yes, sir; it was in the centre of the boat, quite aft, up as near as they could haul it the blocks.

Q. 13. The blocks were together?

A. Yes, sir; I noticed when it was got around.

Q. 14. Was the main-boom in that position at 8 o'clock in the evening?

A. Yes, sir; it was there before 8 o'clock.

Q. 15. How did it remain while you were on deck?

A. It remained right in the same place.

Q. 16. When did you retire that evening?

291 A. I was up after eleven o'clock. I was back and forward. I laid down some part of the evening in the sitting room. I got up and looked out of the window and looked out of the door until I got a little sea-sick, and then I laid down again. I was up and down all evening. I was up after the clock struck eleven.

Q. 17. Where were Mrs. Payne and Mrs. Loomis until after eleven o'clock?

A. They were sitting in this little niche in front of the cabin.

Q. 18. The other ladies were in the cabin?

A. They were in the state-room. The captain gave it up and the girls went in there. They were in there.

Q. 19. Did you notice the position of that main-boom immediately after the collision?

A. Yes, sir; just as quick as there was any light so we could see anything.

Q. 20. Was it dark immediately after the collision?

A. Yes, sir; it was very dark. It was intensely dark.

Q. 21. How had the main-boom's position changed, if any?

A. Not any, except it dropped down on the cabin.

Q. 22. The end of it rested on the cabin roof?

A. Yes, sir.

Q. 23. Was it then midships, or nearly midships?

A. Yes, sir; it was fastened to the blocks below, and it dropped right down.

Q. 24. Did you notice any spray coming over the vessel that evening?

A. Yes, sir; several times when I was up.

Q. 25. What part of it?

A. The left-hand bow as we sat facing the bow of the boat.

Q. 26. What did you notice about that spray?

292 A. I noticed the reflection of the light, and it looked beautiful. They called my attention to it first when I was lying down. I saw it several times during the evening.

Q. What color?

very small, of course. We could see what we called the windows. We were talking to Captain Parsons about it; he had set a signal, and they did not pay any attention to it. He had the glasses in his hands, and was trying to make out the name; saying, if he could ascertain what propeller it was, they could be dealt with for not rendering assistance. I do not remember the words he used; he mentioned what he could see on the propeller.

Q. You saw what you stated on the propeller without the aid of glasses?

A. Yes, sir; I could see it distinctly with the naked eye; could see very much more plainer with the glasses; captain had the glasses in his hands.

Q. About how far were you from the propelier at that time?

A. As near as I could judge, I should think we might have been three miles.

Q. You say you have made five trips on the Osborn?

A; Yes, sir.

Q. Did you ever make trips on any other vessel?

A. Yes. sir; twice to Lake Superior and once with Mr. Wilcox to Buffalo, and once to Oswego.

297 Q. Does your husband own vessels?

A. He did at that time. He was always, since we were married, engaged in the vessel business, more or less.

Q. Does he keep an office?

A. He does at home, in our sitting room. He has a secretary there in the room.

Q. Was there any talk between the captains of the vessels that night in regard to the Union's lights?

A. Yes, sir. I heard Captain Seamans charge them with not having any lights out.

Q. Was that before the conversation about the compass and stars?

A. Yes, sir; it was right away after the collision.

Q. In the first conversation they had?

A. Yes, sir. The first thing I heard them talking about the collision was, I heard the captain ask him why he did not have lights out?

Q. The captain of the Osborn?

A. Yes, sir. He said they got lights out, and the capt. and he started aft to hunt them up.

Q. Did you the next morning stand on the American Union, or any part of her, to look at her lights?

A. Yes, sir.

Q. Whereabouts?

A. Well, I think a little forward of the fore-rigging. They had been talking so much it looked as if they wanted to get up something. Captain Seamans called my attention to where the lights were. If I had the model there, I could tell where we stood. (Counsel presented model to witness.) We stood by the fore-rigging, somewhere in here (indicating), when the boat began to slant back, and we
298 got pretty well back before we could see the screens. It was very misty, too, you know, and the lights were on the main rail. The screens were down on the main rail, and we walked back here (indicating) until we could range them. We went quite a piece back before we could see the screens.

Q. How near did you stand to the rail when you made this observation?

A. We were right up to the rail, and we leaned over until we found the screen.

Q. Where did the mizzen-mast on the Osborn come with reference to the cabin?

A. It came up just in between the dining-room and the clothes-press; that was in here.

Q. Ten or fifteen feet back from the awning?

A. Yes; I think about 15 feet back from the front of the cabin.

Mrs. Wilcox desires to correct her statement to the question in which she was asked whether the blocks were together. She had reference to the blocks on the mizzen-boom instead of the main-boom. The blocks on the mizzen-boom were together about as near as they could be got together.

A. HIPPARD, *Stenographer.*

No cross-examination.

Counsel for respondent read in evidence the depositions of William Smith, John McDonald, John Baker, and Peter Lieb.

299 Captain GEORGE JUDSON, a witness called on behalf of the respondent, being first duly sworn, was examined in chief by Mr. CONDON, and testified as follows:

Q. What is your name?

A. George Judson.

Q. What is your age?

A. Fifty-five.

Q. Where do you reside?

A. Cleveland, Ohio.

Q. How long have you lived here?

A. I have lived here about 18 years in the city.

Q. What is your business?

A. I follow the lakes for a living—sailing.

Q. How long have you sailed altogether?

A. Well, I have sailed vessels since '41.

Q. As what?

A. As master.

Q. How much of the time have you been master?

A. Good deal of the time.

Q. On what different kinds of vessels?

A. Sail and steam.

Q. How long have you sailed on the lakes?

A. I never sailed anywhere else only on the lakes.

Q. Familiar with the customs and usages on the lakes from your experience?

A. I suppose I am.

Q. From your knowledge and experience on the lakes, what would you say as to the propriety of a "three-and-after" carrying her lights on the monkey-rail, outside of the main-rail, just forward of the mizzen rigging?

300 A. I should not carry the lights aft on any vessel?

Q. Why?

A. They are not where you can see them. You are directly forward of them. They are obstructed by the rigging. There are two gangs of rigging back and before them, and there are the anchor stocks, among other things.

Q. How is it in regard to these vessels that tumble in—that are narrower at the mizzen rigging than forward?

A. They are still worse. (Presenting model to witness.) This "three and-after" has another set of rigging back here (ind.), and the lights would be just about in this place (ind.). In a vessel coming dead ahead, and this (ind.) extending up 40 or 50 feet, you have to look through here (ind.). They obscure the light. You cannot get up high enough to look through to see this light unless you get out far enough on one side to look out on an angle.

Q. If the lights were carried forward, each side of the jib-boom?

A. If the lights are carried forward at the proper place, there is no time that we cannot see the lights when it is light enough to see, unless it is foggy or something. When you are directly forward you can see them both. That gives you to understand that when you see both lights that you are directly in range.

Q. Meeting end on?

A. Yes, sir.

301 Q. Your opinion, then, in regard to all three-and-afters is that they should carry their lights forward instead of before the mizzen rigging?

A. All sailing-vessels of all kinds.

Q. In case a three-and-after is from five to six feet wider forward from the main rigging than she is at the main rigging, what would you say as to the necessity in such a case in having them forward?

A. It is still a greater necessity. We have very frequently vessels in tow, and in having the lights in the after part of the vessel you cannot see them. It is a very common thing when they get around a bend or something so as to swing an angle you will see one of the lights.

Q. Have you been engaged much in towing sailing vessels?

A. Yes, sir.

Q. How is it in regard to having your lights at the mizzen rigging when a vessel lists over ahead?

A. Vessels listing over you would not see them until you got almost past or abreast of them; sometimes you get even by and not see a light. I have absolutely passed vessels with the mizzen over and not see the light until after we had passed.

(The witness here explained by means of a model.)

Q. Did you, in 1872, know the American Union?

A. Yes, sir; I have known her ever since she came out.

Q. Is it usual for such a vessel as the American Union to be sailing by the wind in an eight-knot breeze with her mainsail reefed, and not be carrying her mizzen?

302 A. No, sir; it is not.

Q. What objection is there to her not having her mizzen when she is by the wind?

A. Well light vessels in particular fall off. They won't keep up to the wind, and light vessels require all their after sails so they will steer well. In a rough sea they will drop off. On a wind they want all their after sails, and well up at that.

Q. What would you say in regard to a collision occurring about four miles to the westward of Beaver light, say about 12 o'clock at night, summer time, and one of the vessels was loaded and the other light, and the vessels lashed together, the stern of one to the bow of the other, and the light vessel kept her canvas on, and the canvas was taken off the other vessel, and the vessel with her canvas on had her wheel lashed, or kept no man at the wheel, and during the night they drifted,

and about daylight in the morning, say on about August 9th (you know about when daylight occurs then), these vessels were within three or four miles off the dock on the south end of the South Fox Island, what would the drift of those vessels indicate the direction of the wind to be during that time? You are familiar with both places.

A. Yes, sir. About north by east, or most east.

Q. It would not be to the westward of north?

A. It would not seem so from that drift.

Q. (Presenting diagram to witness.) About four miles west of the light?

303 A. Yes, sir; they must have gone pretty close to the Little Fox.

Q. The distance from about four miles to the westward of Beaver light to the South Fox is about how far?

A. It is not far from 12 miles.

Q. If the American Union and the Osborn were lashed together, the Osborn being loaded and the Union light, as indicated in the last question, and were lashed together a little after 12, say half past twelve, on the night of the 9th or 12th of August, and they drifted down to the south end of the South Fox, getting there about daylight, drifting that distance in that time, what would that indicate in regard to the breeze?

A. It would indicate a pretty strong breeze. They would drift pretty fast.

Q. About how many hours would darkness be then from half past twelve?

A. Hardly four hours; not over that at any rate.

Q. They would not drift that distance under a light wind, would they?

A. No, sir.

Q. So that the wind, in your opinion, must not only have been north and north of east, but a strong wind at that?

A. Yes, sir; it must have been a strong wind to take them along that distance—nearly three miles an hour; nearly as fast as a man would walk.

Q. If a three-and-after has the wind at dead aft, would it be a real advantage to her to carry her mizzen?

A. No, sir; a detriment.

304 Q. How so?

A. Small sails break the wind on your large sails; keeps them all the time shaky, and swings them.

Q. A tendency to keep her from her course?

A. They do not steer so well; you lose by it; you do not get so much canvas to pull.

Q. Get the wind on your mainsail and foresail?

A. Oh, yes; the larger sails frequently take in the small sail.

Q. Have you ever been on a three-and-after at Sand Bay wind-bound, or Beaver Island?

A. Yes, sir; a good many times.

Q. What would be the usual course by the master of a three-and-after if he were lying at Sand Bay and desired to go to Green Bay, say that the wind was about north, and he wanted to get under way, say at night, about nine o'clock? Describe to the court what he would do when he hove his anchor up.

A. The first thing I would do would be to heave up my anchor and

then get on my foresails. If I had square sail I would get that on first, and then get on the foresail, and then the mainsail; no hurry about the others; they are not of any use unless the winds lays off the quarter. If the wind laid right aft I would not want the mizzen.

Q. Steering from Sand Bay to go around Beaver light, about what course do vessels usually steer?

A. If you are close in the bay you have to go about south by
305 east, then go south by west, and then southwest, and then west-southwest.

Q. Go along the island, I mean?

A. The course you would make most of the way would be about south.

Q. Suppose two vessels the size of the Union and the Osborn, and of the same class, one being heavily laden with iron ore and the other being light, lashed together, and one having all her canvas except the mizzen (that is the Union), drifting, and no one at the wheel, the wheel lashed, would those vessels drifting make more headway than leeway?

A. Well, that is a pretty hard question to answer. I should calculate they would make about the even thing. They would be up in the wind as much as they would be off. I think they would lay to and drift right over, fall off sideways. That would be my natural supposition unless there would be a sea to keep them off. Get the sail so it don't pull out and take any vessel loaded up in the lake, and get them up in the wind, and they keep up in the wind. They won't steer themselves. Light vessels you might, with a light sale, take the rudder off, and they keep going along all the while.

Q. Is there any current that prevails there that would effect the drifting of those vessels?

A. I have seen a current there. I don't know but I may say three miles an hour. I had about abreast of the light-house to make several stretches to get past.

Q. With the wind north?

306 A. For instance, with a west wind.

Q. The current runs different ways?

A. Well, the island is long; it is twenty miles long; around the end of the island you get your current; as soon as you get off into deep water you lose that current.

Q. Would the current effect the drifting of those vessels?

A. It would whatever way it was; a wind blowing from the south, and a vessel lying there with a headway, when the wind shifted the tendency would be to drift southward.

Q. If the wind blew from the north?

A. As soon as the water gets back from where it was blown before it stops. It takes but a short time.

Q. If two vessels as we have described them were drifting at the place indicated from a point about four miles west of Beaver light, and the wind was then northwest by north, which way would they drift?

A. They would drift over to the eastward.

Q. Would they drift down close to the South Fox?

A. Not if they drifted with the wind. (The witness explained by means of the model.) It would be about eight or ten miles from where they are.

Q. More to the eastward?

A. Yes, sir.

Q. A strong wind for hours from many points causes quite a sea?

A. Yes, generally; when the wind has been blowing from the south

heavy for a day or so you will have a sea rolling down across there for twenty-fours after. If the wind comes from the other way you will have two seas.

307 Q. How does a heavy head-sea affect a light vessel?

A. If you are along with the wind, with a heavy head-sea, a light vessel will fall off more than a loaded vessel. Every time they raise up they drift off.

Q. Much harder to keep in the course?

A. Oh, yes; they have less hold in the water.

Q. It is usual for vessels lying at Sand Bay, on account of a head wind in the summer time, to leave the bay before she can make her course good?

A. That is a pretty hard question to answer. There are different kinds of men. Some men may wait till all the wind dies away to ship, and others till the wind drives them out, and others leave as soon as the wind begins to drop a little.

Q. What kind of a wind would a northeast be for a vessel from Sand Bay bound for Green Bay?

A. Good wind, north-by-east wind; they would sail right on the island—well, north by east they would; you would have to go south by east to get up there. Yes, you would have to run close by land, and I do not know as it would run you clear then.

Q. I understood you to say that if the Union had the wind dead aft, it would be better to have her mainsail and foresail than her mizzen?

A. One sail aft; another small sail will break the wind; you do not get any force on it. By taking in your mizzen you let your large sail get the wind. One of the most disagreeable winds you get is a wind right aft by night.

308 Q. Then you would not call it bad seamanship for a three-and-after on a dark rainy night, suppose she was lying at Sandy Beach Bay, and bound for Green Bay, and the wind were north by east, to get under way and come out there, and not set her mizzen until she got down by the light?

A. No, sir; I should not. I would call it good—be doing work for nothing.

Q. Is it necessary to have all hands to set the mizzen in such cases as that?

A. No, sir; it is not, unless they have not got a full crew.

Q. It could be set during the watch after they got under way?

A. Oh, yes.

Q. How is it in regard to keeping their course—vessels on a dark and boisterous night? How does a loaded vessel compare with a light one?

A. Not much difference; they are both very fine steering vessels; no better steering vessels, I suppose, on the water than either one of them.

Q. What kind of running trim would you say that such a vessel as the American Union would be in, when light, the wind free, if she were carrying her three jibs, foresail, fore and gaff topsail, and her reef mainsail, and did not carry her mizzen?

A. Good trim; easy to handle.

Q. What kind of trim would you say she would be in if she were light and close hauled; had her sheets flat aft; were sailing within five points of the wind, and had only that canvas on?

A. Well, it would not be very good. I do not know of any one that would have that kind of a canvas on in that kind of a wind.

Q. It would not be good seamanship to have that canvas?

309 A. If they were disabled, her sails torn, and she could not have any other canvas, it would be well enough; she would need it.

Q. She needs her mizzen when she is by the wind?

A. Yes, sir, and mainsail, too; all the after-sails she has got. Light vessels want all their after-canvas.

Q. Well, in an eight-knot breeze would a three-and-after carry all her after-canvas—such as the Union? The breeze would not be too strong, would it?

A. That breeze would be a strong breeze for her. She is a very fine sailing vessel. There are very few vessels that are her equal to sail.

Recess until 2 p. m.

2 p. m.—Direct examination of Capt. George Judson resumed:

Q. If a heavy sea were running from the westward and a three-and-after, when light, were headed west, with the wind northwest by north, being only within five points of it, how much leeway would she make going from Beaver Island to Green Bay? What kind of a course would she make?

A. That is owing a good deal to the degree of wind you got.

Q. Eight-knot breeze.

A. Eight-knot breeze, with a heavy sea? She might make not much better than a west-southwest course. That would be a good course for her to make. With a good sea on they fall off. Sometimes you can hardly make them hold their own. When they strike a sea they
310 stop, and they drift off before they get going again.

Q. On these three-and-afters when the mizzen is lowered away it usually lays on the cabin, don't it?

A. Yes, sir.

Q. Is it necessary to roll it up right off?

A. Oh, no; sometimes stop the gaff on top of the beam so it won't swing, or anything of that kind.

Q. Immediately after two large vessels like the Osborn and the Union collide, and where the spar of one is carried away, is it usual to lower away the mizzen and to stow it before it is known whether either of the vessels will sink, or whether any one is killed or injured on board?

A. I could not say as to that. Some men do a thing in haste, or by being frightened. They might not know what they are doing. There is no regular rule to tell what a man might do. If he wanted to keep his vessel up to the wind he might take in his headsail, and if he wanted to take the vessel away from the wind he would take in his gaffsail.

Q. When a vessel is running free they keep her sheets slacked off?

A. They haul them off.

Q. Which sheets are slacked the most, the fore or aft sheets?

A. Aft.

Q. When a vessel is by the wind in hard weather she can carry the mizzen as long as she can carry the other sails?

A. She got to have that. That is the last sail.

311 Q. By the wind?

A. Yes, sir.

Q. How would a vessel steer if she were deeply loaded, say on a dark night and no stars, together with a seven or eight knot breeze, if all her sheets were flat aft and she had the wind a point and a half abaft her beam?

A. She would be carrying a pretty stiff weather wheel.

Q. A. loaded vessel would not, with the wind free, have her sheets in that way, with the wind a point and a half abaft the beam?

A. No, sir; in keeping her sails straight she would not.

Q. In sailing from Green Bay for the straits does the vessel hug the Fox Islands very close at night, or give them a wide berth?

A. Have to keep pretty well off from the South Fox. There is a reef runs along there.

Q. Give them a wider berth at night than daytime?

A. Yes, sir.

Q. Dark night?

A. Oh, yes; you can run very close to the North Fox.

Q. If a light vessel, with the wind free, having all her headsails set, her mainsail reefed, and her mizzen in, discovers a vessel meeting her, end on, a point and a half on her lee bow, in what distance could that vessel, having her wind free, pay off and clear the vessel she was meeting?

A. The wind eight knots an hour?

Q. Yes, sir, with the wind free. In what distance could she change her course?

312 A. She could change her course in running about her length. You have got to go a certain distance before your rudder takes effect in the water. Vessels ought to be at least four lengths from each other to successfully go clear, unless they are prepared to do it.

Q. I mean, supposing in this case that the vessel having the wind free makes the movement, and only she?

Q. They could go clear 3,000 f't—2,000 f't; not much less than 2,000 f't, if the other vessel does not make any attempt to get clear. Take well on to 2,000 f't. In going 16 miles an hour you are going very rapid. It is a great speed. Each one is making their eight miles.

Q. Do you know anything about when these winds blow on the lakes here for a number of hours strong 8 or 10 knot breeze, from what points, if any, do they usually blow, winds of that strength and duration?

A. We get them from all points.

Q. Do they principally from the cardinal points—north, or northeast, or northwest?

A. Generally when it has been warm we get the wind from the north pretty fresh. Our prevailing winds on Lake Michigan are generally from the west and southwest.

Q. They are more from the west and such points?

A. West and southwest more than from most any other direction. South makes the heav'est sea—south and southwest.

313 Q. (Presenting models to witness) Suppose that those vessels were meeting, and that this vessel (indicating) is heading east by north half north, and the white vessel is headed west, and no change is made in their course until they collide, what parts of those vessels will come in contact?

A. Where their ends came together?

Q. Yes, sir.

A. The vessel going east would be either hit on her starboard bow and the vessel going west would either strike her on her starboard bow or be hit on her starboard bow.

Q. That is, the starboard bow of the vessel going west would strike the starboard bow of the one going east by north half north?

A. This vessel going east by north half north, if she run on this ves-

sel at all, would have to hit her on the starboard side, and be hit on the other side.

Q. Well, if two vessels were meeting end on, or almost dead ahead, and this white vessel we will suppose struck on the port side of the black vessel, would that indicate how they were meeting; whether they were crossing?

A. If they hit as they now hit, coming direct on, they would both hit on the port bow; if they hit dead on they could hit on either bow so as the stern got clear; if the stern got clear they could both hit on the same bow, both on the port or both on the starboard bow.

Q. If a vessel is going east by north half north, and a vessel strikes her on the port bow, what course must that vessel be pursuing when she strikes it? Heading how?

314 A. She would have to be headed about an opposite course to the other vessel, not less than west half south.

Q. Captain, when you order a man to the wheel to steer, and tell him to steer full and by, does that indicate that he shall keep her by the wind whether it varies or not?

A. When you tell a man full and by it means keep close haul on the wind; that is, as near as he can get and have the vessel go on.

Q. He is to keep her by the wind no matter how the wind changes?

A. Yes, sir.

Q. If you are going to the westward, and you order the man at the wheel to keep her full and by, does that indicate she is going to any particular point of the compass while she is going full and by?

A. It indicates go where her head-wind drift would take her; it is no particular point, from the very fact you got to have the drift.

Q. It does not indicate that he is going either west by south or west by north?

A. Yes, sir, it does; it indicates where he does go; that is, where he does go is where it is indicated.

Q. My point is this: suppose you tell a man to steer the vessel west, then he has to keep her west; suppose you tell a man when you send him to the wheel to steer full and by?

A. That may make her a west course.

Q. But not necessarily?

315 A. Oh, no; he will frequently tell you it is breaking her off to the southwest, and in a little while he may tell you it is headed west to the north.

Q. It is full and by all the time?

A. Yes, sir, that is what it is; for to keep her close to the wind all the time and not lose anything.

Cross-examination by H. L. TERRELL:

Q. Captain, with a beam-wind I suppose the mizzen is the proper sail to carry it?

A. Yes, sir.

Q. And when it is headed full and by, the wind is stead' and the course is steady?

A. Yes, sir.

Q. Then, if you know where the wind is you know where her course is?

A. Yes, sir; you tell a man to keep west and he will keep there until the wind breaks him off, and he will tell you of it.

Q. Suppose you wanted to make west and you could just about make it by sailing full and by, is full and by an ordinary order?

A. We do not generally tell a man full and by. If we want to steer a west course and we can steer it we are never afraid to go off; when we want to change we can get off if the wind is ahead, and you can't lay your course, or can lay your course; when you tell a man to keep full and by it is in order to keep a sharp lookout where the wind is; you can lay your course and do it easy; you give him the course.

316 Q. If there is any difficulty in laying the course, you give him the order full and by?

A. Yes, sir; the minute you get so you can't keep your course, full and by.

Q. Did you ever tow the American Union?

A. No, sir.

Redirect examination:

Q. I think you stated already that a vessel would make a point or two leeway going over there.

A. It is according to how much sea you have.

Q. The American Union and such three-and-afters do not sail closer than five points to the wind, do they, ordinarily?

A. No, sir; it takes a pretty fine vessel to sail inside of five points; they do not have any around here that do it with any sea on.

Q. Those that do it run by steam?

A. Yes, sir.

Q. If the wind were northwest, could the American Union on her way from Beaver Island to Green Bay and by the wind sail directly west?

A. No, sir.

Q. With the leeway there, how much would she be from west?

A. She would be about two points.

Q. They would give her five points to sail in and one point leeway?

A. They cannot make five points and not count leeway; that is very good sailing. In very smooth water in daytime, when you can see everything, sometimes you can make inside of six points a little, but not much.

317 GEORGE STONE, a witness called on behalf of the defendant, being first duly sworn, was examined in chief by Mr. CONDON, and testified as follows:

Q. What is your business, captain?

A. Well, I follow the lakes.

Q. How long have you followed them?

A. Since '44.

Q. Been a master of a vessel how long?

A. Since '48.

Q. Been on steam as well as sail vessels?

A. Yes, sir.

Q. Been on sail-vessels how long?

A. Twenty years, I guess.

Q. You have lain at Sand Beach Bay, near Beaver Islands, frequently with vessels?

A. Yes, sir.

Q. State from your experience as a mariner or officer of a vessel for that term of years what, in your opinion, is the proper place to have the lights on a three-and-after, whether at the mizzen rigging or forward.

A. My opinion is, and always has been, the hind end of a vessel is not the place to carry a light. In the first place, my recollection is

that they have to be carried to be seen dead ahead, and I say they cannot be carried at the mizzen and be seen dead ahead.

Q. If a vessel tumbles in aft she is wider forward and at the main-rigging, say, five feet?

A. It would be more difficult to see it.

Q. From a position dead ahead it would be impossible?

318 A. No, sir; you cannot see it; that is my experience. I have seen, I guess, five that I have crossed their bows, and it would be some seconds before I could open up their light, and they carried them back on the other quarter.

Q. In the rigging, in case a vessel lists, the booms interfere?

A. Yes; the more they list over the more they hide the lee light.

Q. Captain, here is a chart showing Beaver Island and the two Foxes. There is a green and a red mark indicating the place where the collission is said to have occurred between the Osborn and the American Union, stated to have been four miles to the westward of Beaver Island light. Do you know the Osborn and the American Union?

A. Yes, sir.

Q. Now, suppose that a collission occurred there between these two vessels, the Osborn were deeply loaded and the American Union were light, and the two vessels were lashed together, the stern of one to the bow of the other, and the American Union kept her canvas on except her mizzen, and her wheel was lashed, or no attempt was made to steer, and they were in that position at half past twelve o'clock at night on the night of the 9th of August, and in the morning about daylight these vessels were from three to five miles off from the south end of the South Fox, would that indicate the direction of the wind during the night, and, if so, what direction would you say the wind was?

319 A. I should suppose it would be from the northward. I do not suppose you could tell within a point or two points exactly. That would be owing a good deal to how the vessels would be lashed together. If the American Union was on the weather side, her head being to the westward, she would work naturally to the westward a little. If she was on the other side she would work the other way. They would not be able to drift exactly off from the wind. The more the wind was to the eastward the more she would work to the westward.

Q. If the wind at the time these vessels were lashed together were northwest by north where would they drift?

A. I should suppose they would come down here in the mouth of the bay. (Indicating.)

Q. In an opposite direction to which they did?

A. Yes, sir; not exactly opposite, but a difference of four points anyway.

Q. Captain, what kind of running trim would you say a vessel was in that was light, say one the size of the American Union, having the wind free, if she were carrying three jibs, foresail, fore gaff-topsail, and a reefed mainsail, and was not carrying her mizzen?

A. I should think that would be the sail she would carry, running free.

Q. If she were by the wind, close hauled, what sail would she carry in a seven to eight knot blow?

A. Do you mean to make a vessel pass eight knots or the wind blowing eight knots? The velocity of shore wind we call an eight-knot breeze when we can make eight knots with the vessel.

Q. Suppose you were making eight knots with the vessel?

320 A. I suppose she would want her mizzen and all her lower sails anyway.

Q. The mizzen is a very useful sail on a wind?

A. I have always valued it so when I have been on a three-and-after, when I am by the wind.

Q. What assistance do you derive from it when you are by the wind?

A. It enables you to right your wheel midships, whilst the other way you have to carry your wheel way down, and the vessel go off sideways. I am speaking now of a light vessel.

Q. How would a deeply-loaded vessel steer on a dark night with a quiet sea and seven and eight knot breeze, if her sheets were flat aft and she had the wind say a point and a half abaft the beam?

A. Well, I never trim sails in that way. I do not know how she would work.

Q. She would not work at all, would she?

A. I do not believe she would. I never undertook to trim a sail in that shape.

Q. It would be rather dangerous navigation, would not it?

A. In an eight-knot breeze it would not, but I do not believe the vessel would handle in that shape. It would not be dangerous.

Q. What sails do they usually get on first, say in a vessel laying off Sand Beach Bay, with a northerly wind, bound for Green Bay?

A. There are just about as many different ways about getting under way as there are minds to men. Some men will go to work and
321 get everything on to them; some will play up and go on; get on their headsails and go along; usually get up the foresail and mainsail, and then get under way with that, and then go along if the wind is free.

Cross-examination by Mr TERRELL:

Q. Which has the most to do with the direction in which a vessel drifts, the sea or the wind?

A. Do you mean now a vessel under way?

Q. No; these vessels lashed together that are drifting.

A. The wind, with the canvas on the other vessel, I should suppose would have the most to do with it.

Q. The wind would do the most?

A. Yes, sir; I suppose it would.

Q. In other words, you think that the canvas on a vessel would make the vessel make headway more than the sea would draw her off?

A. Just as I said before. If they were lashed together it would be so.

Q. Suppose the vessel that had the sails up was the windward vessel, so that her sails would pull, what direction would she go; would she run off before the wind, or would she drift with the sea?

A. I never saw a vessel fixed in that shape; I would have to give my opinion. I should suppose it would make a difference of two points to head off the wind.

322 CORNELIUS REWELL, a witness called on behalf of the respondents, being first duly sworn, was examined in chief by Mr. CONDON, and testified as follows:

Q. What is your business, captain?

A. I follow the lakes.

Q. How long have you followed the lakes?

A. I followed the lakes thirty years.

Q. Been master of sailing-vessels how long?

A. 20 years, I guess.
Q. Been employed any on steam-vessels?
A. Yes, sir.
Q. As master?
A. Yes, sir.
Q. How long?
A. Three years.
Q. Did you know the American Union and the schooner S. S. Osborn in 1872?
A. I did, sir.
Q. Did you see the schooner S. S. Osborn, in Cleveland after that collision?
A. I did, sir.
Q. How soon after she arrived here?
A. She arrived somewhere in the night, or in the morning before I got down from my house for my vessel; she was in the creek when I got down here.
Q. Did you go aboard her?
A. No, sir; I was on the deck alongside of her.
Q. Did you notice the position of her main-boom at that time?
323 A. I did, sir.
Q. Did you notice the position of the sheets to it?
A. The sheets were fast to the boom in the usual way.
Q. How did the boom lay?
A. It lay about a third of the way from the mizzen-riggings to the mizzen-mast; about where we generally carry our rigging by the wind; we would call it our sails trimmed by the wind.
Q. Did you notice her mizzen-boom?
A. I did not, sir.
Q. From your knowledge and experience as a master, state whether, in your opinion, it is a safe and prudent place on three-and-afters to carry their lights at the mizzen-rigging?
A. I don't think it is.
Q. Why?
A. It cannot be seen dead ahead.
Q. Supposing that a vessel is from four to six feet wider forward than where the lamps are carried?
A. That makes it worse still.
Q. Where should such a vessel carry her lights?
A. I always carry mine forward. I consider that as the best place, where they can be seen by vessels?
Q. They should be carried so on all vessels.
A. Yes, sir; where they can be seen to the best advantage. I have carried my lights aft by the mizzen-rigging. I say this just to show I was on one vessel where I lost these lamps; but ours was a square-sail, and that knocks lamps about a great deal. I thought I would try to carry my lamps somewhere else; I got them aft, forward of the mizzen-rigging; I carried them there a couple of trips; I did not
324 know better. I was coming down the river once in tow of a tug and we stopped in the river to get wood; the tug did, and I wanted wood myself. It was in the night and I got in a boat with my men to go ashore to get some wood, and got right ahead of my vessel, and I knew the lights were burning, because I had just left them, and I could not see them, and when I got on dock I could not see my lights at all. It was lying right dead ahead. That was the length of my tow-line. I do not know how long my tow-line was; it was, may be, 400 feet.

Q. How long was your vessel?

A. It was 200 feet. I concluded then that was no place to carry my lights, and I put them forward again and run the chance of losing them. I thought I would rather lose my lamps than run the risk of a collision.

Q. Could not you shorten your square-sail so as not to interfere with the lamps?

A. Yes, sir; the square-sail sheets since that we carry our lamps forward by the bowsprit, and there is no trouble, at least I had no trouble; I never lost one forward.

Q. Captain, is it usual for vessels when light, three-and-afters, in an eight-knot breeze, to be by the wind with her mainsail reefed and without any mizzen?

A. I should not think it was; I never had a vessel yet would do much that way.

Q. Cannot keep her within five points of the wind without a mizzen?

A. Not well.

Q. How would she steer?

A. She would not steer at all.

325 Q. How is it in regard to not having a mizzen when you have the wind dead aft?

A. We generally take that in to get the wind on the other sails. It is more harm than good then.

Q. To have it on?

A. Yes, sir.

Q. Captain, if a collision occurred about four miles to the westward of Beaver light, say about twelve o'clock on the night of the 9th of August, between such vessels as the Osborn and the American Union, and one were light, with canvas, and the other loaded, without canvas, and those vessels drifted during the night, and in the morning, when daylight appeared at such time of the year, they were within 3 to 5 miles of the south end of the South Fox Island, what was the direction of the wind, in your opinion, while they were drifting?

A. Well, I should think the wind must have been to the eastward of north to drift from the head of the Beaver down here. (Indicating on diagram.)

Q. About four to five miles westward of the light?

A. I should think the wind must have been north or eastward of north.

Q. That would be drifting pretty fast for those vessels that distance?

A. I should think it would.

Q. About four hours' time?

A. Yes, sir.

Q. Must have had a good breeze?

A. I should think so.

Q. If the wind was northwest by north, would the vessels drift in that direction?

326 A. I should think not.

Q. How would they?

A. More toward Grand Traverse Bay I should think.

Q. Have you any doubts of that?

A. No, sir; I know they would; that is, if there is no current to obstruct them. With the wind 8 knots you could not get current enough to get up to Fox Island, wind northwest by north.

Q. Two vessels lashed together in that way, and the wheel lashed or no one attending to it, would they naturally drift before the wind?

A. Yes, sir; they would drift before the wind. Their sails would forward them ahead some; sometimes the sails might forward them ahead and then they might turn around and get in the trough of the sea, and they would drift right back again. I could not tell where they would drift, because I never saw two vessels in that shape.

Q. If the stern of one were lashed to the bow of the other, would that affect the drifting any—that shape affect the headway some?

A. Well, I guess they would not go right dead to the leeward, because the canvas, as I said, would forward them ahead some, but not much.

Q. Well, if the wind were north by east, and these vessels lashed together in that way, and they forged ahead some while drifting, how would they drift, admitting that they did forge ahead some. If the wind was north by east, and they did not forge ahead any, they would drift how?

327 A. They would drift south by west, but they would naturally forward ahead a little with the canvas.

Q. How much would they forge ahead naturally?

A. In four hours?

Q. Yes, sir; would they drift any east of south?

A. I do not know whether they would or not. I never saw vessels in that shape; that is a thing we are not much more posted in than yourself, because there is not one in ten ever saw a vessel in that shape?

Q. You have laid in Sand Bay often with a three-and-after, have you not, captain?

A. Yes, sir.

Q. What is the usual course adopted for getting out there if you are bound for Green Bay?

A. According to how the wind is.

Q. If the wind is north by east?

A. That depends whether there are more vessels there than yourself?

Q. If you are unembarrassed by other vessels being in your way?

A. As the others said, there are many men of many minds; some men would heave the anchor before they would touch the canvas at all; when they got the anchor up get the foresail and rest of it on.

Q. With the wind north by northeast the course is south by southeast?

A. Yes, sir; around the island.

Q. Is is usual to put the mizzen on?

A. No, sir.

Q. Will a light vessel, by the wind, in an eight-knot breeze and
328 some considerable sea, make leeway going over from Beaver Island to Green Bay?

A. Yes, sir.

Q. About how much?

A. Make a point to a point and a half. There is a difference in vessels; some make more leeway than others.

Q. A north wind or north-by-east wind would be a favorable wind to get out of Sand Bay, would not it?

A. Yes, sir.

Q. Supposing that a three-and-after were leaving Sand Beach Bay on a dark night, and she was bound for Green Bay, and the wind were north by east, would you say it would be bad seamanship for her to sail without her mizzen until she would reach Beaver Island?

A. No, sir; I would not say it was bad seamanship.

Q. Good seamanship?

A. Yes, sir.

Q. What kind of running trim would such a vessel as the American Union be in, when light and the wind free, when she were carrying her three jibs, foresail, fore and gaft topsail, and her reefed mainsail, and did not carry her mizzen?

A. She is in good trim; that is, if they are not in a hurry.

Q. Well, with the wind free, eight-knot breeze, would not that be a good trim for her to sail in and sail well?

A. I should have reefed the gaft-topsail, I think, and put the main topsail on, I think, and may be the mizzen.

329 Q. If the wind were dead aft would you have your mizzen on?

A. No, sir.

Q. Captain, how would a deeply-loaded vessel—a three-and-after—steer on a dark night, with a seven or eight-knot breeze, some considerable sea, with her sheets flat aft, carrying all her canvas, if she had the wind, say, a point and a half abaft the beam?

A. I could not steer well I guess.

Q. Did you ever see a vessel sail that way?

A. No, sir.

Q. What would be the trouble?

A. She would carry her rudder right across her; could not keep her out of the wind. That is what is termed "hard up."

Q. If a light vessel, with the wind free, having all her headsails set, mainsail reefed, and carrying no mizzen, in going about eight knots an hour, discovered a vessel dead ahead of her, a point and a half on one of her bows, how soon could that vessel that is light, moving at the rapidity stated, get out of the track of the vessel she is meeting? How many lengths of her would she have to run before she could change her course so she could avoid a collision?

A. Which bow is the light one, the weather one or the leeward?

Q. Say a point and a half on the lee bow, eight-knot breeze, free?

A. Do you mean how far she would have to travel before she could luff clear or get off clear? In an eight-knot breeze she could luff

330 in about four or five times her length, but if she had the mizzen on she could luff a good deal quicker; she could luff quicker with a mizzen if she got in close quarters.

Q. A mile off be any trouble in keeping off?

A. Going 16 mile an hour, both of them?

Q. Say about 15 miles an hour; 14 or 15 miles an hour?

A. It don't take long to go a mile. I do not know whether you could keep off in time or not.

Q. If you were on a three-and-after that is light, and had all her sails set except the mizzen, the mizzen gaft, the main gaft-topsail, and when, say 10 or 15 minutes before the collision occurred, you saw a vessel dead ahead of you, or say a point and a half on your lee bow, would there be any difficulty in changing your course?

A. Which light did they see?

Mr. TERRELL. The green one.

A. Then I think I could keep out of her way.

Mr. CONDON. If you had two miles space to do it in there would be no trouble, would there?

A. No, sir; I think not.

Q. If you had your mizzen on you could luff in half a mile?

A. He says the green light?

Q. Yes, sir.

A. Well, I would have to cross his bows then. If I saw his green light I could keep out of the way of it, and turn the wheel starboard.

Q. If two vessels are meeting, one going east by north half north, and the other west, and continued on this course, what sides would come together?

331 A. The starboard sides.

Q. Of each?

A. Yes, sir.

Q. If two vessels are meeting and their port bows come together, the jib-boom of one right over the port side of the other, what would that indicate in regard to how they are meeting, whether they are crossing or meeting dead ahead?

A. I do not understand that question.

Q. I will ask you this question: If one vessel is going east by north half north, and the other vessel strikes her on her port bow, the jib-boom comes in on the port bow, in what direction must that other vessel be going?

A. This one going west? (Indicating.)

Q. The one going east by north half north.

A. The other must be going west by south half south.

No cross-examination.

MERVINE THOMPSON, a witness called on behalf of the respondent, being first duly sworn, was examined in chief by Mr. CONDON, and testified as follows:

Q. What is your business, Mr. Thompson?

A. Sailing.

Q. How long have you sailed?

A. About 21 years.

Q. During that time how much of it have you been an officer of a vessel?

A. About 11 years.

Q. How long have you been on sailing-vessels?

332 A. That has been my business, sailing-vessels altogether.

Q. Do you know the American Union and the schooner S. S. Osborn; did you in '72?

A. Yes, sir.

Q. Captain, state from your knowledge and experience as a mariner what is the proper place for a three-and-after to carry her lights that they may be visible dead ahead?

A. Carry them forward.

Q. What objections are there to such a vessel carrying her lights at the mizzen-rigging, on the rail?

A. There are quite a number of objections; they are so narrow aft most generally, on account of the sails hiding the one light—the lee light.

Q. When the vessel lists over?

A. Yes, sir; they are narrow in the stern generally.

Q. Vessels are?

A. Yes, sir.

Q. Captain, is it usual to sail vessels by the wind close hauled without carrying the mizzen?

A. No, sir.

Q. Have you ever seen it done?

A. I don't know that I ever have.

Q. It is usual to carry the mizzen by the wind?

A. Yes, sir.

Q. How is it in regard to carrying the mizzen when the wind is dead ahead?

A. Quite often take it in and roll it up altogether.

Q. Full mainsail and foresail and other headsails is all you want?

A. Yes, sir.

333 Q. Here is a chart showing Beaver Island and Fox Islands. Suppose two vessels, the size of the Osborn and American Union, were lashed together, about half past twelve o'clock at night, on the ninth of August, about four or five miles westward of Beaver Island light; that the vessel the size of the American Union carried all her foresails, and had no mizzen, gaff-topsail, or main gaff-topsail, and the stern of the vessel the size of the S. S. Osborn, deeply loaded, were lashed to her bow, both vessels lashed together, and that in the morning they were within 3 to 5 miles of the south end of the South Fox, what direction would you say the wind been there during the time they were lashed together?

A. I think in the neighborhood of north somewhere. I cannot tell exactly where it would be. Probably somewhere in the neighborhood of north.

Q. If it varied any would it be to the westward or eastward of north, in your opinion?

A. I would not be able to say. I should think that the drift would be somewhere in the neighborhood of the north. I would not say whether it would be west of north or east of north.

Q. Would it vary more than a point either way?

A. I could not tell.

Q. If the wind wore northwest by north during the time that these vessels drifted would they drift down to that place?

A. No, sir.

Q. Where would they drift?

334 A. Down in Traverse Bay, over to a point near Little Traverse Bay.

No cross-examination.

Council for respondent read in evidence the depositions of the following-named witnesses:

James O'Niel, William Price, Capt. John French, William Seamans, S. Lampoh, J. H. Andrews, Albert S. Outis, E. S. Outis, Edward Ingraham, and Charles O. Ingraham, Peter Bondy, and Sylvester Smith.

Also offered in evidence the affidavits of Robert Mott, George Magley, Thomas G. Gilkison, Robert and F. Parsons, separately, and an affidavit by the crew of the American Union, consisting of the following-named persons: Charles O. Ingraham, Edward Ingraham, Eliphalet Outis, Albert S. Outis, Thomas G. Gilkison, George Magley, Robert Mott, and Frank Wicks, certified to by F. O. Clark, notary public.

(Objected to by H. L. Terrell, proctor for libellant.

Received subject to exception by respondent.)

C. B. BEACH, a witness called on behalf of the respondent, being first duly sworn, was examined in chief by Mr. CONDON, and testified as follows:

Q. Is your name Christian B. Beach?

A. Yes, sir.

Q. Where did you live on the 21st of August, 1872?

A. Cleveland.

335 Q. Where was your office at that time?

A. Willey, Terrell and Sherman, I believe, or Willey, Cary & Terrell at that time, in 1872.

Q. Do you remember having had a protest entered before you on or about that time by the crew of the schooner American Union?

A. I remember such a protest. I cannot say anything as to the time. I have no means of fixing it.

Q. You were a notary public at that time?

A. I was, I believe.

Q. Where is the original protest, as sworn to before you?

A. I have no idea, sir.

Q. Where was it when you last saw it?

A. Well, I cannot say as to that. I do not remember when I did last see it.

Q. Had you taken many protests before that time?

A. Several, I believe.

Q. Did you retain the original in your possession?

A. No, sir; not strictly so. I filed them with the papers, I believe, generally in the office; constructively in my possession.

Q. What papers—your own papers or their papers?

A. Papers in the case; probably office papers.

Q. You, as notary, did not retain the original protests that were made before you?

A. I did not retain them in my immediate possession.

Q. You kept them there in your office among the other papers in the case?

A. Probably that is the case. I do not remember the circumstances in this or any other.

Q. Do you know where that original protest is now?

A. I do not.

336 Q. Have you made any inquiries lately to ascertain where it is?

A. No, sir; I don't know that I have ever inquired in regard to it or looked for it since that Mr. Vorce spoke to me about it.

Q. When was that?

A. It was some time ago; it was possibly two years ago.

Q. He asked you to look for the original protest?

A. He asked me were it was, and I told him I did not know; probably in the office.

Q. Have you made any inquiries of Mr. Terrell, or any one connected with the office, in regard to it?

A. No, not since then, I guess.

Q. Did you make a copy of that protest for Prentiss and Vorce, or any of them?

A. I seen that paper (referring to copy of protest), and that is in my handwriting.

Q. How much of it is in your handwriting?

A. I guess all of it that appears in writing there.

Q. Please examine it so it is not necessary for you to guess. (Handing copy of protest to witness.)

A. Well, I have to read it over very carefully. (Witness reads.) That writing is all mine, sir.

Q. Who drew up that protest?

A. What do you mean by that? Who wrote it out?

Q. Yes, sir.

A. I suppose I did.
Q. Who dictated it?
A. Well, that is not entirely clear in my mind.
Q. Who were present when it was drawn?
A. I cannot tell you that.
337 Q. Was it drawn in Willey, Terrell and Sherman's office, or Willey, Cary and Sherman?
A. Yes, sir; it was drawn over there.
Q. Was Mr. Terrell present when it was drawn?
A. I do not know.
Q. Was Capt. Parsons there when it was drawn?
A. Is he the captain of the American Union?
Q. Yes, sir.
A. Well, I am not positive as to that either.
Q. From whom did you derive the information that is stated here in regard to this collison written out by you?
A. I cannot tell except as it appears upon the document there; I may have received it from Parsons or from all together; I cannot tell you how that was. I did not burden my mind with it at the time, and hardly thought of it since; that is, to recall any of the facts in the case.
Q. Did you know any of the parties that signed the protest?
A. I never seen them before they made the protest. I believe I seen Parsons sometimes since then; frequently.
Q. Were you acquainted with the man who signed his name here with a mark?
A. I was not, sir.
Q. Don't know whether in fact that was his name or not?
A. No, sir.
Q. Did all the parties whose names are attached here sign at that time, or only a number of them; do you remember?
A. I do not.
Q. What was your habit in regard to certifying documents purporting to be signed by parties?
338 A. What was my habit, or what is?
Q. What was.
A. Do you mean whether I did it regularly or irregularly?
Q. I want to know your habit.
A. I suppose when a paper was executed before me, in my presence, I witnessed it.
Q. Was it your practice, in having parties sworn before you, to read the paper over to them?
A. I think it was undoubtedly my practice. I know it would be very wrong if it was not. It may be that all the parties were not present at the time, but when they did sign it it was certainly read over to them. It is possible they were all there. It was a paper of that kind that I was frequently called upon to draw up, and it made no impression upon my mind, so I do not remember.
Q. It was rather an important document, was not it?
A. Certainly; we had a great many important documents.
Q. You are certain that you read it over to these parties before you signed it?
A. I am not certain as to that either; I probably did if I certified to it.
Q. Were you in the habit of certifying to things you did not do?
A. No, sir; I was not.

Q. This being in your handwriting, and certified to by you, is correct?

A. Undoubtedly, sir.

Q. You do not swear that this is a copy?

A. No, I do not.

Q. Who did you furnish this to?

339 A. I cannot tell you. I suppose it was either Mr. Varce or Mr. Prentiss.

Q. Do you remember whether it was soon after it was drawn up?

A. I do not.

Q. Do you know what they asked you to do when they demanded this of you?

A. Well, *know*, I do not; accurately speaking, I suppose they wanted a copy of the protest.

Q. Did you make them a copy of the protest?

A. I probably did.

Q. Is this it?

A. That is the paper that I made out, but as to whether it is an accurate copy I am unable to say.

Q. Have you any reason to doubt its accuracy?

A. None whatever, but every reason to believe it is; but I know nothing of it.

Q. Look at that paper, and state how much of it is in your handwriting, and what it is. (Presenting original protest to witness produced by council for libellant.)

A. I should say that my handwriting first appears in the certificate here, "21st August, 1872, Christian B. Beach."

Q. The main body of the protest is not in your handwriting?

A. Not in my handwriting.

Q. All on the first and second pages is not in your handwriting?

A. No; and this is not in my handwriting (ind.), except down where I signed my name.

Q. The jurat only is in your handwriting?

340 A. That is all, I believe.

Q. In both places?

A. Yes, sir.

Q. In whose handwriting is the rest, the main body of the protest?

A. It is Mr. Terrell's, I believe.

Q. Do you remember doing anything to it except swearing the witnesses?

A. Swearing the witnesses, and probably present when it was.

Cross-examination by Mr. TERRELL:

Q. That was made in your presence, was it, Mr. Beach, by the various witnesses?

A. It was.

Q. Signed by them?

A. Yes, sir.

Q. And sworn to by them?

A. Sworn to by them all except Robert Mott.

Mr. CONDON. You did not know any of these parties, did you?

A. No, sir.

Q. The party purporting to be Robert Mott signed that?

A. Yes, sir.

Respondent rests.

Libellant's rebuttal.

Counsel for libellant read in evidence the deposition of William P. Brien.

(Objected to by respondent; objection overruled.)

341 It is admitted by the parties respectively that J. Emery Bailey, of Toledo, Ohio, is bail for the libellant in this case.

Testimony closed.

United States district court within and for the northern district of Ohio.

THE STATE OF OHIO,
Northern District, ss:

WM. G. WINSLOW ET AL., PLAINTIFF,
against
THE SCH'R S. S. OSBORN ET AL., B. O. Wilcox, claimant, defendant.

The libellants will take notice that on Monday the 19th day of March, A. D. 1877, the above-named claimant and cross-libellant will take the depositions of Thomas Dougherty, James Bowen, William Christy, and others, sundry witnesses to be used as evidence on the trial of the above-entitled cause, at the office of William H. Condon, 152 La. Salle st., in the city of Chicago, county of Cook and State of Illinois, between the hours of eight o'clock a. m. and six o'clock p. m. of said day, and that the taking of the same will be adjourned from day to day, be-

342 tween the same hours, until they are completed.

PRENTISS AND VARCE,
Attorneys for Cross-Libellants.

I acknowledge service of the above notice by copy this 15th day of March, 1877.

WILLEY, TERRELL AND SHERMAN.

The depositions of C. J. Vogall, John Cowans, James Bowen, Wm. W. Bates, and John G. Keith, witnesses of lawful age, produced, duly examined, cautioned and sworn on their corporal oaths on the 19th day of March, A. D. 1877, at the office of Wm. H. Condon, 152 La Salle st., Chicago, Illinois, between the hours of eight o'clock a. m. and six o'clock p. m. of said day, by Mr. John C. Phillips, within and for the city of Chicago, county of Cook, and State of Illinois, in pursuance to the notice hereto annexed, and also under the provisions of the statute in such cases made and provided for the taking of depositions de bene essa.

Said depositions were taken to be read in evidence on behalf of the respondent and cross-libellant on the trial of a certain cause now pending and undetermined in the district court of the United States for the northern district of Ohio, held at Cleveland, Ohio, which is more than one hundred miles from Chicago, Illinois, in which suit Wm. Winslow et al. are libellants and the Schooner S. S. Osborn is respondent and B. O. Wilcox is claimant and cross-libellant.

343 The said C. J. Vogall, John Cowans, James Bowen, Wm. W. Bates and John G. Keith were each by me first duly cautioned,

carefully examined and sworn according to law, previous to the commencement of each of their examinations, to testify the truth, the whole truth, and nothing but the truth, as well upon the part of the libellants as of the claimants and cross-libellants, in relation to the matters in controversy, between the said parties so far as each should be interrogated thereto, on oath testified as follows:

And the said C. J. VOGALE, being first duly sworn according to law, deposes and says as follows.

Direct examination by WM. H. CONDON:

1st. Q. What is your name, age, residence and occupation?

A. C. J. Vogal; age, 44; Chicago; capt. mariner on lakes.

2. Q. On what vessels have you been employed at any time during the last seven years?

A. Propeller Equator, propeller Lady Franklin, steamer Gough, Manied, tug Goldsmith Maid.

3. Q. Do you know the parties to this suit?

A. I do not.

4. Q. When were you on board the schooner American Union last?

A. Yesterday, March 18th, about 8 p. m.

5. Q. Were there any signal-lights on the vessel at that time; if yea, where were they placed, how were they hung, and about what size?

A. Yes; they were placed just forward the mizzen rigging, out-
344 side of the monkey-rail, in the screens on the main-rail, at the place where the lights were carried, as shown by hole in the rail for iron bolt to fasten the screens; burning brightly, large-sized signal-lights, the same as used by a vessel of about the same size as the American Union.

6. Q. How high were the Union's lights, when in those screens, placed, as you stated, above the water?

A. I should think about 14 feet.

7. Q. Was the Union's rail any higher forward than aft, say about 15 feet forward of the foremast, than where her lights were carried?

A. Yes, it was between 3 and 4 feet.

8. Q. Was she light or loaded when you made these tests?

A. She was light, lying in Sampson's slip, south branch of Chicago River.

9. Q. Did you make any observation when about 60 or 70 feet ahead of the Union's jib-boom to ascertain whether her lights could be seen from that point; and, if so, at what elevation, if any, could they be seen?

A. I did; I could see her lights at about an elevation of about 25 feet above the water; it couldn't be seen at an elevation of 20 feet above water.

10. Q. In making that observation was your view obstructed in any way?

A. There was nothing to obstruct the view at all; I had a good opportunity to make the test; her rail forward was so much higher forward than it was where her lights were placed that I had to get to that elevation before I could see her lights.

11. Q. Did you make any tests as to the visibility of her lights at a distance of about 1,000 feet ahead of her?

345 A. I did, at a distance of about 1,000 or 1,100 feet; at a distance of 45 or 50 feet from dead ahead I could see her light. I had to get that distance from a line dead ahead to see the light. I made that observation at an elevation of 13 feet above the water.

12. Q. Did you take any observation of the lights at that distance ahead of the vessel on a level of the water?

A. I did, standing on the ice.

13. Q. Could her lights, standing thus, be seen dead ahead?

A. They could not.

14. Q. What distance, if any, from dead ahead could they be seen?

A. About 50 to 60 feet; had to go about five feet further to one side to see them than I did when I saw them from an elevation of 13 feet.

15. Q. In answering several questions you use the term dead ahead. Define that term as used by you.

A. It is a direct line with her masts.

C. J. VOGELL.

Subscribed and sworn to before me this 19th day of March, 1877.

[SEAL.] JOHN C. PHILLIPS,
Notary Public.

And the said JOHN COWANS, being first duly sworn according to law, deposes and says as follows:

Direct examination by Mr. W. H. CONDON:

1st Q. What is your name, age, residence, and occupation?

A. John Cowans; age, 42; residence, Chicago; sailor, my occupation.

346 2. Q. How long have you sailed, and in what capacity?

A. Commenced sailing when 16; been master of a vessel the last 10 years.

3. Q. Did you make any observation of the visibility of the signal-lights on the schooner American Union, last evening? If yea, state the same.

A. I did.

4. Q. State fully what kind of lights were used, whether they were burning or not, how they were placed, and the different points from which you observed them, and give the results of your observations.

A. The usual signal-lights used on that class. I helped to place the light there, four feet forward of the mizzen rigging, on the main-rail, outside the monkey-rail. Where her lights were carried could be easily seen by the hole for the bolt that holds the screen. The vessel was light, and her lights were placed as stated; were about 12½ feet from the water, and about 15 feet forward of the foremast. Her rail was about 15 feet above the water. At her knight-heads her rail was about five feet higher than it was where her lights were. The lights were burning bright, as we use them when sailing. I made an observation of her lights from a point sixty or seventy feet ahead of her jib-boom, and had to stand on an elevation of 20 or 25 feet above the water in order to see them. I made another, of a distance of about 1,000 f't dead ahead of her, standing on a level with the lights, and could not see it, and had to go to a point 40 or 45 feet from dead ahead of her before I could see the light.

347 5. Q. Did you, when at that distance ahead of her, take any observation of her light, when standing on the ice, on a level with the water?

A. I did, and found I had to go about 50 or 55 feet from a line dead ahead of her before I could see the light.

6. Q. When you made these tests, what opportunity had you to see her lights from the points where you saw them and tried to see them?

A. There was no obstructions in the way; had a good chance to see her light.

JOHN COWANS.

Subscribed and sworn to before me this 19th day of March, 1877.
[SEAL.] JOHN C. PHILLIPS,
Notary Public.

And the said JAMES BOWEN, being first duly sworn according to law, deposes and says as follows:

Direct examination by WM. H. COWEN:

1. Q. What is your name, age, residence, and occupation?

A. James Bowen; 40; Chicago; sailor part of the time.

2. Q. How long have you been connected with or interested in vessels?

A. These last 11 years.

3. Q. Were you on board and around the American Union last evening with Capt. Cowans and Vogel, when they were taking observations of her lights?

A. Yes, sir.

348 4. Q. How high was the Union's rail above the level of the river at her mizzen rigging, and at a point above 15 feet forward of her foremast?

A. At her mizzen rigging her rail is about 13 feet above the water, and about 16 feet above the water at a point about 15 feet forward of her foremast.

5. Q. Where were her lights placed, how were they burning, what size were they, and what time in the evening did you make any observations of them?

A. The lights were placed about four feet forward of her mizzen rigging at the main-rail, outside the monkey-rail. They were burning bright. They were the usual size for large vessels. I made the observations between 7 and 8 p. m.

6. Q. What test, if any, did you make to see her lights from any points ahead of her and in line with her spars?

A. About 75 feet dead ahead of her, at an elevation of 25 feet, I could see her lights, but at no less distance, to the best of my opinion and knowledge. I went about 1,000 feet dead ahead of her, on an elevation 12 or 15 feet above the water, where I could get a good view of her, and the lights could not be seen dead ahead until I got about to 50 feet from dead ahead of her. They could not be seen on either side until you got that distance on either side from dead ahead of her.

7. Q. At a distance of about 1,000 feet ahead of her on a level with the water, 50 feet from dead ahead of her, did you try to see her lights?

A. I did not; the others tried to.

JAMES BOWEN.

349 Subscribed and sworn to before me this 19th day of March, 1877.
[SEAL.] JOHN C. PHILLIPS,
Notary Public.

And the said WM. W. BATES, being first duly sworn according to law, deposes and says as follows:

Direct examination by WM. H. CONDON:

1st Q. What is your name, age, residence, and occupation?

A. Wm. W. Bates; 50; Chicago; designer, builder, and repairer of vessels.

2. Q. How long have you followed those occupations?

A. Since I have been of age. In fact, since I have been 13 years old. Have been in that business since 1864–'65 in Chicago.

3. Q. How many vessels have you designed and built, or assisted in building, in the past 25 years?

A. 20, more or less, varying in size from the largest to the smallest; am familiar with the business of naval architecture thoroughly; have designed a sloop of war.

4. Q. Have you ever been engaged, and if yea, how long, on any periodical devoted to ship-building and designing?

A. For three years I was associate editor of the Nautical Magazine and Naval Journal, published by Griffiths and Bates, New York, May, '54 to 1858, devoted to ship-building, engineering, and commerce.

5. Q. Did you have anything to do with the preparing the
350 rules for construction, inspection, and classification of all lake vessels—1875 or 1876—if yea, state the same?

A. I did, in 1875–'76, prepare the present rules for construction, inspection, and classification of lake vessels for Capt. A. P. Dorr, of Buffalo, the proprietor of the work, and general agent of the Etna Insurance Company on the lakes.

6. Q. Have you ever been proprietor of a dry dock in Chicago; if yea, how long?

A. I have been coproprietor for about 9 years, or thereabouts, and in the course of my experience have repaired many hundred of vessels.

7. Q. Do you know the parties to this suit personally?

A. I knew one of the Winslows and knew the schooner Osborn.

8. Q. Do you know the American Union; and, if yea, how long and when were you last on board of her?

A. I have known her many years; I was last on board of her yesterday.

9. Q. Did you examine her with anybody; and, if yea, with whom, for the purpose of ascertaining her form and shape, and how they affected the visibility of her lights in a certain location?

A. I examined her in company of Capt. John G. Keith, and took measurements of her hull in his presence, which we verified at the time with a view to drawing plans on paper to correctly represent her dimensions and form, and the obsticles affecting the visibility of her lights, to wit, the rigging, the shrouds, the fore and main masts, and the timber-heads, and anchor-stocks, and bowsprit and the monkey-rail around the vessel.

351 10. Q. In what manner did you proceed in order to take those measurements?

A. I measured the length of the vessel from taffrail to knight-heads, and divided it into divisions of 16 feet spaces; at each joint of divisions in the length I took the half breadths to outside of main-rail, and also at each division of length I took the hights of the main-rail from light water-line, that is to say, from the upper surface of the ice around her. I also measured the width of the rail, the height of the monkey-rail, and the positions of the masts, shrouds, timber-heads, anchor-stocks, the position of the lamps-height of the bulwarks, and took other measurements, enabling me to make the plans lettered A, B, and C accompanying this testimony.

11. Q. Did you find your various measurements to prove correct when you came to make your plans, or otherwise?

A. I found that the measurements were very correct, indeed. I could scarcely have expected them to have come so well on a drawing of only

one-eighth ($\frac{1}{8}$) of an inch to the foot—there were no corrections found to be necessary.

12. Q. Do you know as an architect that your drawings for all practical purposes may be taken as absolutely correct?

A. I do, most certainly.

13. Q. You have referred to the plans A, B, and C of the hull of the American Union, what other lines have you projected upon your draft?

A. I have projected the lines of light and shadow, which are indicated by dotted marks moving along and ahead of the vessel,
352 and they are correct representations of the lines of light and width of shadow, and refer to the draft for a better description of them.

14. Q. Do the shadows of the vessel's lights increase or diminish with distance?

A. They increase two directions—horizontally and vertically.

15. Q. What would be the width of the shadow of the vessel's hull at a point a $\frac{1}{4}$ of a mile distant right ahead of her?

A. From my measurement the width of the shadow of the hull at a quarter of a mile distant right ahead is 121 feet 4 inches.

16. Q. What is the width at $\frac{1}{2}$ mile?

A. 215 feet, 4 inches.

17. Q. What is the width at $\frac{3}{4}$ of a mile?

A. 309 feet, four inches.

18. Q. What is the width at one mile?

A. 403 feet and 4 inches.

19. Q. At what height is the top of the shadow from the water at $\frac{1}{8}$ of a mile right ahead?

A. 25 feet.

20. Q. At $\frac{1}{4}$ of a mile?

A. 37 feet.

21. Q. At $\frac{1}{2}$ a mile?

A. 61 feet.

22. Q. At $\frac{3}{4}$ of a mile?

A. 85 feet.

23. Q. At a mile?

A. 119 feet.

24. Q. Do you mean to say that at the distance of $\frac{1}{4}$, $\frac{1}{2}$, $\frac{3}{4}$, and one mile that the lights of this vessel would be invisible right ahead
353 within the widths, and at the heights from the water that you have stated.

A. I do, and the plans will show it.

25. Q. Why does the shadow right ahead increase so rapidly as you have described?

A. It increase' in width because the hull is so much wider at the midships than it is at the position of the lights, which is just forward of the mizzen rigging on the main-rail, as shown on the plans A, B, & C; this difference in width is about 5 feet; the exact difference can be ascertained by the scale on the plan.

26. Q. Why does the shadow right ahead increase so rapidly from the water?

A. It is because the bow of the vessel is so much higher than the position of the lamp from the water. This difference of hight is about 3 feet, as may be seen on the plans by the scale.

27. Q. Please attach your draft as Exhibit A to your deposition.

A. Here it is; attach it to my deposition as Exhibit A.

WM. W. BATES.

Subscribed and sworn to before me this 19th day of March, 1877.
[SEAL.] JOHN C. PHILLIPS.

And the said JOHN G. KEITH, being first duly sworn according to law, deposes and says as follows:

Direct-examination by WM. H. CONDON:

354 1. Q. What is your name, age, residence, and occupation?
A. John G. Keith; 34; Chicago; vessel master.
2. Q. What vessel were you master of the last season, and how long have you been master of her?
A. Schooner Halstead; from her first existence, 4 years.
3. Q. How long have you been officer of a vessel?
A. 13 years; master 10 or 11 years.
4. Q. Have you ever been ship carpenter; and, if yea, how long have you worked at that business?
A. I have. Have worked several winters at that business.
5. Q. Have you ever been interested as part owner; and, if yea, how long?
A. I have been interested in vessels as part owner for 10 years.
6. Q. Have you recently made any measurements of the schooner American Union in company with anybody; if yea, whom?
A. I have, in company with Wm. W. Bates.
7. Q. What measurements did you and he make of said vessel?
A. We measured her length from taffrail to knight-heads, her half breadth at sections of 16 feet apart, the whole length of the vessel, and height from water to top of main-rail the full length of the vessel opposite each section, as stated, in breadth.
8. Q. Did you know that schooner in August, 1872; and, if yea, state whether she has been changed any since then?
A. I knew the vessel in fall of '72, and part of the monkey-rail she then had she has not now; that part is wanting between the after part of fore-rigging and forward part of cabin.
355 9. Q. Did her monkey-rail she then carried affect in any way a view of the lights from a position ahead of her; if yea, how?
A. In a measure it would, as the top of the light being about equal with top of monkey-rail, and as the rail raised in the forward body of the vessel it would obstruct the view of the light from a position ahead or nearly ahead of the vessel.
10. Q. How does the schooner Halstead compare with the size of the American Union?
A. The Halstead is somewhat larger than the American Union and of the same rig as she is.
11. Q. Where do you carry the signal-lights on your schooner?
A. On screens forward of the fore-rigging on each side.
12. Q. Why don't you carry them aft on the rail just forward of the mizzen-rigging?
A. Because I consider it an improper place, for the reason that my vessel is considerably wider amidships than at the mizzen-rigging; also considerably higher forward than at the mizzen-rigging, as vessels usually are; therefore the lights would not be seen directly ahead, the view being obstructed by main and fore-rigging, timber-heads, &c., &c.
13. Q. How does the form of rail of your schooner compare with that of the American Union?
A. It is strikingly similar.

14. Q. If the American Union had carried her lights forward of her fore-rigging how much nearer would they be to an object approaching her from ahead?

A. About 112 or 115 feet.

15. Q. Would that be any advantage to a vessel approaching
356 her ahead, or nearly ahead?

A. It would, more especially in close contact; the nearer the lights theplainer to be seen, as 100 additional feet would often clear a collision that would otherwise occur.

16. Q. Are there any disadvantages in carrying the lights forward?

A. A great many vessel masters object to carrying them forward, for the reason they are more liable to be washed away, and that the square-sail setting and taking in would interfere, but I have never found any of those difficulties, as the square-sail is subordinate to the lights, not the lights to the square-sail; the lights must be seen, while we can sail without a square-sail.

17. Q. Look at Exhibit A to Wm. W. Bates' deposition, and state whether the diagrams and calculations made thereon are correct or not.

A. They are correct, as I assisted Mr. Bates in making the measurements and verified the same by measuring the plans or diagrams on this exhibit, and find them to accurately correspond with the measurements actually made by us.

JOHN G. KEITH.

Subscribed and sworn to before me this 19th day of March, 1872.
[SEAL.] JOHN C. PHILLIPS,
Notary Public.

357 STATE OF ILLINOIS,
Cook County, City of Chicago:

I, John C. Phillips, a notary public in and for said county, duly appointed, commissioned, and acting as such, do hereby certify that, in pursuance of the annexed notice, I caused the said C. J. Vogall, John Cowans, James Bowen, Wm. W. Bates, and John G. Keith, whose names are subscribed to the foregoing depositions, to appear before me on the 19th day of March, A. D. 1877, at Wm. H. Condon's office, 152 La Salle street, Chicago, Illinois, at which time Wm. H. Condon was present as proctor for claimant and cross-libellant; that previous to the commencement of the examination of said witnesses by Wm. H. Condon each of said witnesses was by me first duly cautioned, carefully examined, and sworn according to law to testify the truth, the whole truth, and nothing but the truth, relative to the matters in controversy in a cause now pending and undetermined in the district court of the United States for the northern district of Ohio, held at Cleveland, Ohio, which is more than one hundred miles from Chicago, Illinois, in which suit Wm. G. Winslow et al. are libellants and the schooner S. S. Osborn is respondent and B. O. Wilcox is claimant and cross-libellant, so far as he should be interrogated concerning the same; that said depositions were taken at Wm. H. Condon's office, 152 La Salle
358 street, Chicago, Illinois, on the day above stated, and were reduced to writing by me, John C. Phillips, and that I am not attorney for or related to either of the parties to the above-entitled suit, nor interested in the event thereof, and that after said depositions were taken by me as aforesaid the interrogations and answers thereto of the witnesses as written down by me were read over to the said C. J.

Vogall, John Cowans, James Bowen, Wm. W. Bates, and John G. Keith, and that thereupon the same were duly signed and sworn to by each of said witnesses before me, at the place and on the day and year aforesaid, and that each of said depositions have been retained by me ever since.

In witness whereof I have hereunto affixed my hand and notarial seal this 19th day of March, A. D. 1877.

[SEAL.] JOHN C. PHILLIPS,
Notary Public.

Protest.

UNITED STATES OF AMERICA,
State of Ohio, Cuyahoga County, City of Cleveland, ss:

To all whom these presents shall come or may concern, I, Clifton B. Beach, a notary public in and for the State of Ohio, by letters patent under the great seal of the said State, duly commissioned and sworn, dwelling in the city of Cleveland, send greeting:

Know ye that on the 21st day of August, in the year of our
359 Lord one thousand eight hundred and seventy-two, before me, the said notary, appeared Captain Robert F. Parsons, of the schooner called the American Union, of Buffalo, New York, burthen 543 tons, and noted in due form of law, with me, the said notary, his protest for the use and purposes hereinafter mentioned. And now, at this day, to wit, the day of the date hereof, before me, the said notary, at the city of Cleveland aforesaid, again comes the said Captain Robert F. Parsons and requires me to extend his protest; and, together with the said Captain Robert F. Parsons, also came C. O. Ingraham, mate; E. Ingraham, 2nd mate; E. Outis, A. Outis, Geo. Magley, Frank Wicks, T. G. Gilkison, and Robert Mott, seamen, belonging to the aforesaid schooner, all of whom being by me duly sworn voluntarily, freely, and solemnly do declare and depose as follows, that is to say: That on Monday, August 5th, 1872, he, the said Captain Robert F. Parsons, set sail and departed in and with the said schooner American Union, as master thereof, from the port of Cleveland, Ohio, having on board the said schooner no cargo, said schooner American Union being light, and bound for the port of Escanaba, Michigan; that the said schooner was then stout, staunch, and strong; had her cargo well and sufficiently stowed and secured; was well masted, manned, tackled, victualled, apparrelled, and appointed, and was in every respect fit for sea and the voyage she was about to undertake. On Friday, August
9th, 1872, the said schooner American Union came to an anchor
360 at 1 o'clock a. m. at Sand Bay, on the east side of Beaver Island, in Lake Michigan, the wind at that time blowing from the south-west; weather squally. Schooner remained at anchor there till 9 o'clock p. m. of the same day. Schooner then got under way, the wind having shifted to about northwest by north. Schooner was abreast of Beaver Island light-house at 11½ o'clock p. m. of the same day, and at that time the schooner was hauled up by the wind, with sheets flat aft. The orders to the man at the wheel were to keep her full and by, which would make her head about due west, with starboard tacks aboard. Schooner continued on in this way until about five minutes after 12 o'clock p. m., when we made the green light of a vessel about two points off our lee or port bow. We held our course steadily, and about ten or fifteen minutes after we made the lights of the vessel. She struck us on our port bow, about 15 feet from the stern, crushing in

our planks, frames, and ceiling, breaking our clamps and breast-hook, tearing our flying jib, springing our jib-boom, and breaking our head gear. For a half hour previous to the collision and at the time of the collision the night was bright and starlight. There was about an 8-knot breeze. Our course at the time of the collision was about west, and had been for three-fourths of an hour prior thereto; the course of the colliding vessel at the time of the collision was about northeast, and no variation of her course was noticed after her lights were first made, unless just before she struck. The wind at the time of the collision was about northwest by north, and had been in
361 that direction for an hour prior to the collision. At the time of the collision and for an hour prior thereto our schooner had her lights properly placed and screened and brightly burning, and our officers and men were each and all at their respective proper posts and places, vigilant and attentive to their duties. The colliding vessel afterwards proved to be the schooner S. S. Osborn, of Fairport, Ohio.

And the said Captain Robert F. Parsons further says: That as all the damage and injury which already has or may hereafter appear to have happened or occurred to the said schooner or her cargo has been occasioned solely by the circumstances hereinbefore, and cannot nor ought to be attributed to any insufficiency of the said schooner American Union, or default of him, this deponent, his officers or crew,

He now requires me, the said notary, to make his protest and this public act thereof, that the same may serve and be of full force and value, as of right shall appertain; and thereupon the said Captain Robert F. Parsons doth protest, and I, the said notary, at his special instance and request, do by these presents publicly and solemnly protest against winds, weather, and seas, and against said collision and against all and every accident, matter, and thing had and met with as aforesaid, whereby or by means whereof the said schooner American Union or her cargo already has or hereafter shall appear to have suffered or sustained damage or injury for all losses, costs, charges,
362 expenses, damages, and injury which the said schooner, or the owner or owners of the said schooner, or the owners, freighters, or shippers of her said cargo, or any other person or persons interested or concerned in either, already have or may hereafter pay, sustain, incur, or be put into, by or on account of the premises, or for which the insurer or insurers of the said schooner or her cargo is or are respectively liable to pay or make contribution or average according to custom, or their respective contracts or obligations; and that no part of such loss and expenses already incurred, or hereafter to be incurred, do fall on him, the said Captain Robert F. Parsons, his officers, or crew.

Thus done and protested in the city of Cleveland this 21st day August, in the year of our Lord one thousand eight hundred and seventy-two.

In testimony whereof I, the said notary, have subscribed these presents, and have also caused my seal of office to be hereunto affixed, the day and year last above written.

[SEAL.] CLIFTON B. BEACH,
Notary Public.

STATE OF OHIO,
Cuyahoga County, City of Cleveland, ss:

Robert F. Parsons, E. INGRAHAM, C. O. Ingraham, E. Outis, A. Outis, Geo. Magley, Frank Wicks, T. G. Gilkison, and Robert Mott, seamen of and belonging to the schooner called the American

363 Union, being severally duly sworn, do severally make oath and say that the foregoing instrument of protest hath been clearly read over to them, these deponents, and that the several matters and things therein contained are right and true in all respects, as the same are therein particularly alleged, declared, and set forth.

R. F. PARSONS.
C. O. INGRAHAM.
EDWARD INGRAHAM.
E. OUTIS.
ALBERT OUTIS.
GEORGE MAGLEY.
FRANK WICKS.
THOMAS G. GILKISON.
his
ROBERT × MOTT.
mark.

Subscribed and sworn to before me this 21st day of August, 1872.
[SEAL.] CLIFTON B. BEACH,
Notary for said County.

STATE OF MICHIGAN,
County of Delta, ss:

Robert Mott, being duly sworn, deposes and says that he relieved Elipalet Outis from the lookout forward on topgallant-forecastle deck at 12 o'clock in the night; had been there about five minutes when I saw a green light two points to our lee bow, and the light was to leeward of us all the time until the co lision with the S. S. Osborn,
night of the 9th and the morning of the 10th of August, and did
364 not leave the lookout until the vessel was about to strike the American Union, and then he ran aft.

his
ROBERT × MOTT.
mark.

Sworn to and subscribed before me this 13th day of August, 1872.
F. O. CLARK,
Notary Public, Delta County, Michigan.

STATE OF MICHIGAN,
County of Delta, ss:

George Magley, being duly sworn, deposeth and says that he relieved Thomas G. Gilkison of the wheel of the American Union at 12 o'clock night of the 9th and 10th of August, 1872, and got the course from him "full and by the wind;" the vessel would head due west, and that she was kept steady on her course; and had been there about 15 minutes when I heard Chas. O. Ingraham, first mate, halloo to the Osborn "to keep away, you will be into us;" immediately afterwards I heard a crash; the vessels had collided. The American Union had not varied a particle from her course until the collision.

GEORGE MAGLEY.

Sworn to and subscribed before me this 13th day of August, 1872.
F. O. CLARK,
Notary Public for Delta County, Michigan.

365 STATE OF MICHIGAN,
County of Delta, ss:

Thomas G. Gilkison, being duly sworn, deposes and says that he relieved the wheel of the American Union at 10 o'clock p. m. August

9th, and remained there until (12) twelve o'clock in the night; and between the hours of eleven and twelve we were abreast of Beaver Island light, when the vessel was hauled by the wind, the sheets flat aft; and the captain, Robert F. Parsons, was standing near me at the wheel when he gave me the order to keep the vessel by the wind, which I did; she would head due west, close by the wind, and she was kept so until 12 o'clock, when I was relieved by George Magley, and I told him to keep her full and by the wind.

THOMAS G. GILKISON.

Sworn and subscribed before me this 13th day of August, 1872.

F. O. CLARK,
Notary Public for Delta County, Michigan.

STATE OF MICHIGAN,
County of Delta, ss:

Deposition of Robert F. Parsons, captain of the schooner American Union, taken on the 13th day of August, 1872, at Escanaba, county of Delta, State of Michigan, before me, a notary public for the county of Delta aforesaid:

The said Robert F. Parsons, being duly sworn, deposes and says as follows:

That he is captain of the schooner American Union; and that
366 on Friday, the 9th day *day* of August, lie at anchor at Beaver Island until half past nine o'clock p. m.; wind shifted from southwest to "nor'-nor'west;" we hove up anchor and left for Escanaba, and half past eleven o'clock same evening we were abreast of Beaver Island light-house; wind shifted to "nor'west;" we hauled the vessel by the wind, the sheets flat aft, and told the man at the wheel, Thomas Gilkison, to keep her full and by the wind, and by the wind she would head due west on the wind, with starboard tacks. At 12 o'clock I was not feeling well, and I asked Mr. Charles O. Ingraham, my first mate, to stop on deck in charge for me one hour and I would lie down. He and the 2nd mate both stopped on deck, as it was the 2nd mate's watch on deck. I went below and laid down on my bed with boots and all my clothes on, and had been lying down about ten minutes when Mr. Chas. O. Ingraham came to my door and called me on deck. I immediately went on deck; he said there was a vessel coming pretty close to us; he pointed to leeward, showing me a green light about two points on our lee or port bow; I told Mr. Ingraham to go forward and hallo to him to keep away, which he immediately did; we could not keep out of his way as we were on the starboard tack by the wind, and our vessel kept steady on her course. Immediately after Mr. Ingraham hallooed to keep away I saw the other vessel luff up, and should judge it was about a minute or a minute and a half until he struck us. The vessel proved
to be the S. S. Osborn, bound to the eastward with a cargo of
367 iron ore. She struck us on the lee bow about 15 feet from the stern, crushing in our plank frames and ceiling and breaking our clamps and breastwork; tore our flying jib; sprung our jibboom; broke all of her head-gear. We made the vessels fast together until we ascertained whether they would sink or float; we got them separated on the morning of the tenth, the Osborn being in an unmanag'able condition. The American Union took her in tow; towed her down the straits until 3 o'clock p. m., until the propeller City of Concord took the Osborn from us in tow, when we "about ships" and proceeded on our voyage

to Escanaba, where we arrived without any further disaster on the 11th day of August at 9 o'clock p. m.

(Signed) ROBERT F. PARSONS.

Sworn to and subscribed before me this 13th day of August, 1872.

F. O. CLARK,
Notary Public for Delta County, Mich.

STATE OF MICHIGAN,
County of Delta, ss:

The following persons, being duly sworn, depose and say, viz, Charles O. Ingraham, Edward Ingraham, Elipalet Outis, Robert Mott, Thomas G. Gilkison, Albert S. Outis, George Magley, Frank Wicks, that they were all on deck at the time of the collision above referred to in the deposition made by Captain Robert F. Parsons, and that they have heard such deposition read and know it all to be true, except as
368 regards the conversation therein referred to between the captain and first mate, which they did not hear, except the first mate himself, which he says is true in substance and matter.

CHARLES INGRAHAM.
EDWARD INGRAHAM.
E. OUTIS.
FRANK WICKS.
THOMAS G. GILKISON.
ROBERT + MOTT. (his mark.)
GEORGE MAGLEY.

Sworn to and subscribed to before me this 13th day of August, 1872.

F. O. CLARK,
Notary Public for Delta County.

DELTA COUNTY, *ss:*

I do hereby certify that the within is a true copy of protest and affidavits made before me by the within-named parties, on file in my office, October 25th, 1872.

F. O. CLARK,
Notary Public.

(Here follows diagram marked page 369.)

370 *Commissioner's report.*

In the district court of the United States for the northern district of Ohio.

WM. G. WINSLOW ET AL.
vs.
SCH'R S. S. OSBORN, BLISS O. WILCOX, CLAIMANT. } 705. Admiralty.

The report of Earl Bill, commissioner, to whom this cause was referred to take and state an account of the damages sustained by said libellants by reason of the collision in their libel set forth.

The testimony of sundry witnesses has been taken by said commissioner, in the taking of which he has been attended by the proctors of

the respective parties to this suit, and which testimony is filed in said court with this report. Since the taking of said testimony the said parties, by their respective proctors, have, in presence of said commissioner, admitted that the expenses paid by said libellants for repairs upon the said schooner American Union made necessary by reason of the collision aforesaid amount to the sum of fifteen hundred ($1,500) dollars, and that the damages to said libellants by reason of the delay or "demurrage" caused by the collision aforesaid amount to the further sum of sixteen hundred ($1,600) dollars, making in all the sum of thirty-
371 one hundred ($3,100) dollars, which said sum is found accordingly; and it is further found that upon the sum last aforesaid the libellants are entitled to interest, to be computed from the 3rd day of October, 1872, to the first day of the present term of this court (the same being by like admission of said parties, so far as said dates are concerned, and if interest is to be computed at all upon said damages), which said interest is found by said commissioner to be the sum of $930.00, said damages and interest in all amounting to $4,030.00.

It is therefore found by said commissioner that the libellants are entitled to recover as their damages by reason of the collision aforesaid the aforesaid sum of four thousand and thirty dollars ($4,030.00), besides the costs of this action.

Respectfully submitted.

EARL BILL,
Commissioner.

Testimony taken before commissioner.

In the district court of the United States for the northern district of Ohio.

W. G. WINSLOW ET AL. *vs.* SCH'R S. S. OSBORN. } No. 705. In admiralty.

Testimony of witnesses sworn and examined October 23rd, 1877, by and before Earl Bill, commissioner, to whom the above cause
372 referred to take and state an account of the damages sustained by said libellants by reason of the collision in the libel mentioned. Present, H. L. Terrell, counsel for libellants, and C. M. Varce, counsel for claimant *of* defendant.

J. W. WALTON, being duly sworn, deposes as follows:

I am a member of the firm of Upson and Walton, of Cleveland, ship-chandlers. In 1872 our firm supplied the sch'r American Union with an outfit or supplies. The bill now shown me, marked A, contains a statement of articles furnished by our firm at the times stated therein, and the charges therefor are reasonable and proper, or were at the time. The amount of the bill is $175.49. This bill was made out separately from other supplies during the season, for the reason that, as I was informed, the supplies were for the repair of damages to the vessel. This information came from some one representing the Union.

J. WHITTLESEY WALTON.

FRANK WRIGHT, being also duly sworn, deposes and says as follows

I am bookkeeper for Presley and Co., proprietors of dry-dock in Cleveland, and ship-builders and repairers. I was formerly bookkeeper for

the former firm of Stephens and Presley, in 1872, who were then engaged in the same business and predecessors of Presley and Co.

373 The schooner American Union was repaired at their dock in 1872. The amount charged for said repairs, for labor and materials, is $1,156.59, the bill whereof is here exhibited, marked B. These charges were at the time reasonable and just. The time occupied in making said repairs was as follows: It was commenced August 23, 1872, and finished September 21st, 1872. These repairs were made on the forward end of the vessel.

Cross-examination by Mr. VARCE:

Our books do not indicate upon what particular part of the vessel the repairs were made any more than the bill does. I was present during the making of the repairs in the yards, but I am unable to specify upon what particular part of the vessel each item of labor and material were applied.

Our books indicate that this bill is for items used upon the forward end of the vessel, there having been two accounts kept, one for the forward end and the other aft. Both were made at the same time, but the account for each was kept separate on the books at the request of Presley, and I may have heard the captain's directions to the same effect, but am not certain. The separation in detail was made under the direction of the foreman of the work, and the charges were so separately made at the dictation or direction of the foreman or Mr. Presley, though in some instances I may have made the measurements of material myself.

FRANK WRIGHT.

374 Also J. B. COWLE, being duly sworn, deposes as follows:

I was in 1872, and am now, one of the proprietors of the Globe Iron Works, which in 1872 made some Hauser pipes and a beveled chock, and labor thereon, for the American Union schooner. The bill now exhibited, marked C, contains the items of the account for the same, and the charges therein contained were reasonable in amount. We delivered the articles to the ship-yard of Stephens and Presley.

JOHN B. COWLE.

Also REUBEN D. SWAIN, being duly sworn, deposes as follows:

In 1872 I was a member of the firm of V. Swain's Sons, and still am, which firm furnished supplies to the American Union in that year. The bill now exhibited, marked D, contains the items of said supplies, and the charges therein contained were reasonable in amount.

The articles were delivered to the vessel.

V. SWAIN'S SONS.

375 A.

CLEVELAND, OHIO, 16 *Sept.*, 1872.

Sch'r American Union, bought of Upson & Walton, importers and dealers in steel and galvanized wire rope, manila and tarred cordage, oakum, anchors, chains, blocks, canvas, ship-chandlery, and supplies; agents for Mount Vernon Duck Co.; 129 & 131 River st., & 140 and 141 Dock:

Aug. 21.	1 coil 3½ manila, 348#	19..	66 12	
24.	180 y'ds No. 4 cott. duck	39..	70 20	
29.	40 fath. 2½ manila, 62#	19..	11 78	
	1 q. " Lyle pat. block		3 15	
	1 q. " d'ble do		5 94	
Sept. 10.	4 y'ds parcelling	11..	50	
	4 " rounding	18..	72	
11.	2 " lamp-black	18..	36	
14.	1 coeup side-light	..	14 50	
	3¼ " ratline	16..	52	
				173 79
16.	4 y'ds parcelling, 11, 50; 7½ ratline, 16, 1.20.			1 70
				175 49

Forward end. Collision No. 1.

376 B.

CLEVELAND, OHIO, *Sept. 28th*, 1872.

Sch'r American Union, to Stephens and Presley, dr.

[Ship builders and repairers, & proprietors of dry-dock. Harvey Stephens. George Presley. Office & yard, No. 95 Elm street.]

1872.				
Aug. 26.	For 5,592 feet oak	40..	223 68	
	" 377# spikes	8..	30 16	
	" 352 " iron	7..	24 64	
	" jibboom stick	..	30 00	
	" 4 washers	2..	08	
	" 66 feet pine	25..	1 65	
	" 16# nails	7..	1 12	
	" 150# oakum	13..	19 50	
	" 35# paint	15..	5 25	
	" seam-brushes	21..	50	
	" tongues to bulkheads	..	1 00	
	" 154 feet pine	40..	6 16	
	" blacksmithing	..	65	
	" 10 deck plugs	..	50	
	" 560 feet decking	45..	25 20	
	" 2 days' labor @5 00	..	10 00	
	" 11 " " @4 00	..	44 00	
	" 191 " " @3 50	..	668 50	
	" 32 " " @2 00	..	64 00	
				1,156 59

Rec'd pay.

STEPHENS & PRESLEY.

377 C.

CLEVELAND, OHIO, *Sept. 21st*, 1872.

Barque American Union bought of Globe Iron Works:

[Manufacturers of marine, stationery, and portable engines & boilers; castings of all descriptions; special attention given to vessel, rolling-mill, & gas-work casting. J. B. Cowles, J. F. Pankhurst, R. Wallace, H. D. Coffinbury, proprietors. Office & works, cor. Elm & Spruce sts., west side.]

Sept. 10.	To 6½ h'rs on Hauser pipe patterns @45	..	2 93
16.	" 2 Hauser pipes, 258# @ 5½	..	14 19
	" 1 bevel chock, 62# "	..	3 41
	" 4 h'rs arm pipes @56	..	2 00
			$22 53

D.

CLEVELAND, OHIO, *Aug. 29th*, 1872.

Sch'r American Union to V. Swain's Sons, dr.

[Ship-chandlers and sail-makers; importers and dealers in steel and galvanized wire rope, oakum, blocks, &c., &c.; manufacturers of manilla and tarred cordage; agents for Woodbury and Druid cotton ducks. Nos. 155 and 157 River street; 149 and 150 Dock.]

378	64 feet 5 ⅜ } 66 " 4½ ⅜ }	155 lbs. t'd rope	.....16..	24	80	
Lanyards,		142 " " "	.....16..	22	72	
		57 " sp. yarn	.....16..	9	12	
						56 64

Forward end. Collision No. 1.

Exceptions to report.

In the district court of the United States in and for the northern district of Ohio. In admiralty.

W. G. WINSLOW ET AL.
vs.
THE SCH'R S. S. OSBORN. } In admiralty. Exceptions to report.

And now comes the defendant and excepts to the report of Earl Bill, clerk in this cause, and for grounds for exceptions the defendant avers that the amount found as the cost of repairs is too large an amount for the same, and the amount found for demurrage is too large an amount therefor.

PRENTISS AND VARCE,
Proc. for Def't.

379 *Final decree.*

October term, A. D. 1876. Wednesday, December 26th.

Present, the honorable Martin Welker, district judge.

W. G. WINSLOW ET AL.
vs.
SCH'R S. S. OSBORN, BLISS O. WILCOX, CLAIMANT. } 705. Admiralty.

The report of Earl Bill, commissioner, to whom it was referred to ascertain and report the damages of said libellants by reason of the collision in said libel set forth, having made and filed his report, and by consent of parties this cause came on to be heard thereupon, and upon the exceptions to said report by said claimant, and on motion of said libellants, by H. S. Terrell, their proctor, it is ordered that said exceptions be overruled, and that said report and the matters therein contained be in all things confirmed.

And it is therefore ordered, adjudged, and decreed by the court that said libellants recover against said schooner S. S. Osborn the sum of four thousand and thirty dollars, their damages so in and by said report found and assessed by reason of the collision aforesaid, together

with their costs in this behalf expended, taxed at $517.48, and that the cross-libel filed herein by the said Bliss O. Wilcox be, and the same is hereby, dismissed.

380 And it being shown to the court that Bliss O. Wilcox, J. Emery Bailey, and Thomas Courtright have stipulated, in the sum of seventeen thousand dollars, that they will abide and answer the decree of this or any appellate court in this cause, as by their bond duly taken and returned into this court by the marshal, with the mesne process issued herein, it duly appears, it is therefore ordered, adjudged, and decreed that said libellants recover of the said Bliss O. Wilcox, J. Emery Bailey, and Thomas Courtright said sum of four thousand and thirty dollars, the damages aforesaid, and also the costs aforesaid, taxed at $517.48.

And thereupon said Bliss O Wilcox, claimant, of said schooner S. S. Osborn, gave due notice of his intention to appeal this cause to the next circuit court, which said appeal is allowed, and bond therefor is fixed at the sum of $8,000.

And it is further ordered that the time within which said appeal shall be perfected shall be extended for the period of twenty days from this date.

381 NORTHERN DISTRICT OF OHIO, *ss:*

It is hereby certified that the foregoing is a transcript of the record and proceedings in the district court of the United States within and for the district aforesaid, in the case named at the beginning thereof, made up pursuant to the 53rd of the admiralty rules of practice prescribed by the Supreme Court of the United States.

Witness my official signature and the seal of the said court, at Cleveland, in said district, this 22nd day of February, A. D. 1878.

[SEAL.] EARL BILL, *Clerk*,
By GEO. WYMAN,
Deputy Clerk.

382 *Appeal.*

In the circuit court of the United States within and for the northern district of Ohio.

BLISS O. WILCOX, APPELLANT,
vs.
WILLIAM G. WINSLOW AND HEZEKIAH J. Winslow, appellees. } Appeal.

The said Bliss O. Wilcox represents to the court here that on the 26th day of December, A. D. 1876, in a cause in admiralty then pending in the district court of the United States for said district, wherein the said William G. Winslow and Hezekiah J. Winslow were libellants, and the schooner S. S. Osborn, her tackle, &c., and the appellant, as claimant thereof, were respondent, and appellant, as such claimant, was cross-libellant, and the schooner American Union, her tackle, &c., and said appellees, as claimants thereof, were respondents to said cross-libel, said district court rendered a decree in favor of said appellees, as such libellants, and against the appellant, as such claimant, and J. Emery Bailey and Thomas Cartright, as bail, for $4,030.00 damages and $517.48 costs, and dismissing said cross-libel, as by the transcript of the record of said cause and decree filed in this cause doth appear.

And said Bliss O. Wilcox hereby appeals from said decree and prays that upon the hearing of said appeal upon the testimony offered
383 in said district court, and upon new proofs to be offered by appellant as follows:

As to the course and locality of the vessel American Union and S. S. Osborn at and before the collision in the libel complained of, and thereafter;

As to the direction of the wind at and before the time of said collision at and near the locality thereof;

As to the sail carried by each of said vessels, and as to the manner of said collision and the injuries caused thereby;

As to the visibility of the American Union's lights before and at the collision, and as to the improper placing and carrying of said lights by said vessel;

As to the sufficiency and competency of the lookout on said American Union before and at the collision;

As to the credibility of the libellants, witnesses, and to contradict the testimony of the same;

To impeach Robert F. Parsons, a witness produced and used by the libellants—

That said decree may be vacated and reversed, and that appellant may recover of said appel'ees his damages and costs, as in his cross-libel in said cause in said district court he prayed.

PRENTISS AND VARCE,
Proctors for Appellant.
BLISS O. WILCOX, *Appellant*,
By PRENTISS AND VARCE.

Filed Feb. 26th, 1878.

384 *Motion to dismiss appeal.*

U. S. circuit court, northern district of Ohio. In admiralty.

W. G. AND H. J. WINSLOW *vs.* SCHOONER S. S. OSBORNE. } Motion to dismiss appeal.

And now come the said libellants, by H. L. Terrell, their proctor herein, and move the court to dismiss the appeal of Bliss O. Wilcox, claimant herein, and for cause say:

That by the rules of the district court governing this case appeals in admiralty from the district to the circuit court must be taken within ten days from the date of the decree in the district court, unless further time be given by special order of the judge; that by order of the judge the time of claimant herein for perfecting his appeal herein was extended to twenty days from the date of the final decree in the district court, to wit, December 26th, 1877, and expired on the 15th day of January, A. D. 1878, at which time no appeal had been filed or perfected herein by said claimant, and in fact no appeal was filed herein until the cause was docketed and transcript filed in the circuit court, to wit, on the 27th day of February, A. D. 1878, more than a month after time, and was then filed in the circuit instead of the district court, as required by law.

385 Wherefore libellants pray that the appeal herein be dismissed,

H. L. TERRELL,
Proctor for Libellants.

Filed M'ch 11th, 1878.

W. G. WINSLOW ET AL.
vs.
SCHOONER S. S. OSBORN. } Appeal in admiralty.

Testimony of witnesses taken before Earl Bill, United States commissioner, on the 11th day of March, 1878.

By consent of parties, notice of the taking of testimony is waived.

Present, H. L. Terrell, esq., on behalf of libellants, and W. H. Condon, esq., on behalf of respondent.

Proctor for libellants objects to the taking of any testimony to be used on the hearing in the circuit court, for the reason that the pretended appeal in this case does not set out what testimony the claimant intended to take, or upon what points to be used in this court, as required by rule 23rd of the district court in admiralty.

Mrs. LIDIA WICOX, a witness called on behalf of the respondent, being first duly sworn, was examined in chief by Mr. CONLY, and testified as follows:

386 Q. 1st. When you first went on deck after the collision between the Osborn and the American Union what is the first thing you heard?

A. I heard captain say, "What's up?" and Wesley replied that the vessel came into us on the right side.

Q. 2. Wesley who?

A. Wesley Seamans, the mate.

Q. 3. Did you hear any conversation between Charles Ingraham and Captain Parsons, a few minutes after the collision, about the Osborn's lights?

A. Yes, sir; I heard Charles Ingraham tell Captain Parsons that our lights were not rung is what deceived them.

Q. 4. What do you mean by "our lights"?

A. Why, I suppose he meant our signal-lights, I suppose.

Q. 5. The Osborn's?

A. The Osborn's signal-lights.

Q. 6. Did you hear Parsons and Chas. Ingraham say how the vessels were meeting at the time of the collision?

A. They talked about meeting end on; talked as though we met on all night; both he and his crew. There was no talk that night of meeting any other than end on.

Q. 7. Do you know how the wind was immediately after the collision?

A. I do. Very soon after—I couldn't tell just how soon—very soon after the clouds broke away and I could see the north star.

Q. 8. How did you ascertain?

A. By looking at the fly on the mainmast of the American Union. I heard them talking at that time about the wind, and looked to see myself how it was.

387 Q. 9. The fly was on the mainmast, you say?

A. Yes; that I looked at.

Q. 10. Did you see Captain Parsons and Captain Seamans examining the fly on the Osborn?

A. Yes, sir.

Q. 11. Where was the fly on the Osborn?

A. On her mizzen-mast.

Q. 12. About how soon after the collision did you ascertain how the wind was?

A. Well, I couldn't tell to a moment; it was after it cleared away; perhaps—oh, it might have been a half an hour; may be more or less; I couldn't tell exactly.

Q. 13. How was the wind then?

A. The wind was east of north.

Q. 14. Did you hear any conversation between Seamans and Parsons about the sheets of the Osborn?

A. Yes; that is the first conversation I heard them have between the two captains. It is the first conversation I heard was about the sheets. Captain Seamans said he had been closed. Parsons said, "Why, I have not closed;" "No, sir," said Captain Seamans, "I hauled the wind close; come right here and see my sheets; you can see that they are flat up, and," says he, "you see where my boom is." Then he says, "We will go right up to the binnacle and see how the wind is."

Q. 15. Who said that?

A. Captain Seamans said to Captain Parsons, "We will go right up and see how the wind is," and they went up on the quarter to the compass, and he showed them the compass and the fly. He says,

388 "You see I am right that the wind was north by east."

Q. 16. How were the sheets when they were shown as you state?

A. They were just as flat as they could be, excepting the boom had dropped down. Of course that dropped down and left them a little slack; of course they would drop down a few inches. They were just as flat as they could be excepting a very little slack.

Q. 17. Did you hear it stated after eleven o'clock on the night of the collision how the Osborn was heading at that time?

A. Yes, sir. I heard Captains Seamans ask just before he came in the cabin—ask the man at the wheel how she was heading. He said she was heading east by north half north.

(Objected to as incompetent.)

Q. 18. Do you know when sheets are flat aft on a vessel?

A. Yes, sir, I do; I know they are hauled as close as they can be hauled.

Q. 19. How was the foreboom of the Union when you got aboard of her that night?

A. It was off, over the rail, or to the rail. I had to go under it. It was off enough so that I had to go under it to go to the cabin. I went along the port side. I got over near the fore-rigging. I don't remember whether it was before or aft. I think it was before the fore-rigging where I got over—I am sure it was before the fore-rigging—and went aft to the cabin on the port side; and then I went under the foreboom; and the wind came down off of the sail and took my water-proof cloak over my head.

Q. 20. If that boom had been flat out, could you have gone under it?

389 A. No, sir; couldn't go around on the ports side—that is, to go as I went. I went along a little ways from the rail.

Q. 21. Did you hear Parsons say, after the collision, anything about doing damage to any one?

A. Yes, sir. We stood looking at the Osborn; it was after we had separated in the morning. I felt badly for the collision for Mr. Wilcox. We were talking. He said he had sailed a vessel for ten years and it was the first dollar's damage he had ever done anywhere or any one.

W. G. WINSLOW ET AL.
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A. Yes, sir. We stood looking at the Osborn; it was after we had separated in the morning. I felt badly for the collision for Mr. Wilcox. We were talking. He said he had sailed a vessel for ten years and it was the first dollar's damage he had ever done anywhere or any one.

Q. 22. Did you hear Captain Seamans say what distance from the Beaver light the collision occurred?

A. Yes, sir. I heard both of the captains say that we were between two and three miles from Beaver light. I asked them—they were both on the Union at the time—very soon after the collision—I asked them —they stood talking—we all three stood talking together—I asked them how far we were from Beaver light, and they said, both of them, that we were between two and three miles.

Q. 23. How soon after the vessels collided did you get aboard the Union?

A. Oh, I guess a minute or two. We stepped very quick. We thought the boat was going right down under us. We didn't stop for very much ceremony. I was the last one that got off from our boat. It was—why, couldn't have been more than a minute and a half. It was just as quick as I could get aboard.

Q. 24. Did you hear any orders given on the American Union after you got aboard of her?

390 A. The first order I heard after they found that we were not sinking—it wasn't a half a minute after—I heard them tell "Sound the pumps," and then to take in the fore gaff-topsail. I saw them take in the fore gaff-topsail. I was right behind them when they took it in. That is the first sail they took in.

Q. 25. Was the mizzen taken off of the Union after the collision?

A. No, sir. There was no mizzen on her when I went on. I noticed it. I supposed it was carried away by the collision. I noticed it was gone.

Q. 26. Did you notice its condition when you went in?

A. Only that it was off, and I supposed it had been carried away by the collision.

Q. 27. How soon was that after you got aboard?

A. Right away. I went out to see if the women were aboard safe just as quick as I could go.

Q. 28. Did you notice whether they were carrying a whole mainsail or not?

A. No, sir; they were not. They had a reefed mainsail.

Q. 29. Do you remember what time your vessel left Escanaba?

A. Six o'clock in the morning—before six o'clock.

Q. 30. In the morning after the collision, I believe you stated that you saw Fox light?

A. Yes, sir.

Q. 31. Or during the night?

A. Well, I saw it. Yes, saw it in the night, and I saw it when we saw Fox Island.

Q. 32. Did you look over the bow of the Union when you saw that?

391 A. Captain Parsons and I were talking about the propeller not coming to us. He was angry, and I asked him if he thought they could see our signal of distress, and he said "Yes." He called my attention to what we could see on the propeller himself, and wanted to make out what the propeller had. We were then standing on the port bow of the Union looking across at the Osborn.

Q. 33. Looking across which bow of the Union?

A. The port bow.

Q. 34. If the Union had been heading southwest, then what bow would you have had to look over to see the propeller, if you know?

A. Why we should have had to look over the other bow.

Q. 35. Starboard bow?

A. Yes, sir; if she had been heading southwest.

Q. 36. Where were you when the Osborn's foremast fell?

A. I was on deck. I was the first one on deck, Captain Seamans right behind.

Q. 37. Where were you when the main-boom of the Osborn settled down on the roof of the cabin?

A. I was right by the cabin door; just out—may be two or three feet out. I have got a plan of the cabin. I could tell you right where I stood. This niche in here (indicating). I came out of the door right here. This (ind.) was the sitting-room. I came from the state-room right here (ind.), and stood about here (ind.), and the main-boom dropped. I was pretty near under it—not quite—when it dropped down.

Q. 38. Did you notice whether the cabin of the American Union was on deck or not?

392 A. Yes, sir; it was up on deck, wholly.

Q. 39. Were there any lights in it immediately after the collision?

A. Yes, sir. There was a little in the kitchen and a little in the dining-room, and a little in the bed-room, that is, the captain's room.

Q. 40. When did you see there were lights?

A. The time I went aboard the boat. The door was open and I saw the light. They told me to go into the door that was open there, and I went. It was in the kitchen door. The kitchen was on the port side.

No cross-examination.

Signature waived.

H. L. DORAN, a witness called on behalf of the respondent, being first duly sworn, was examined in chief by Mr. CONLY, and testified as follows:

Q. 1. What is your name, age, residence, and occupation?

A. H. L. Doran; age, 36; residence in Cleveland, at present; occupation, is a sailor—lakeman.

Q. 2. Have you been an officer of a sailing vessel; and, if so, how long?

A. I have been a master for about nine years.

Q. 3. On the lakes?

A. Yes, sir.

Q. 4. Do you know whether or not it is usual, in a 7 or 8 knot breeze, for a two-masted schooner during the night to wing out sail that way?

393 A. Well, it all depends on the surroundings. If you are in a narrow place, and can't haul up to the point, why they generally will wing out—that is, they have to do it; but if you have got an open lake for two or three miles, and can haul up, generally rather do it.

Q. 5. Instead of winging out?

A. Instead of winging out. It is rather risky business, but still, where you can't keep up the point, of course you have to wing out, because your foresail won't fill.

Q. 6. In the case of a squall, what danger is there in a vessel winging out?

A. Well, there is great danger. No prudent master will have his vessel winged out in a squall. He will always get his sheets or booms, and both, one side or the other—port or starboard—or forward if it is possible for him to do so.

Q. 7. How is it in regard to discovering those squalls at night, in comparison with day-time?

A. Of course they are not as readily discovered in the night as they are in the day time, unless he is a very watchful officer. Others are negligent. Great many losses occasioned by vessels being winged out.

Q. 8. Do you know Captain Parsons, who sailed the American Union in 1872?

A. Yes, sir; I do.

Q. 9. Did he have any conversation with you about how this case could be won?

A. Yes, sir.

Q. 10. About giving his evidence tor anybody?

(Objected to as incompetent.)

394 A. The fall or the summer of the collision I was speaking with him on Main street bridge——

Q. 11. I have not asked you in regard to any conversation except where he stated how this case could be won, and what means, if any, could be adopted for that purpose.

A. Well, he approached me in Painesville.

Q. 12. When was that?

A. That was two years ago, I guess, somewheres. I have never thought of it to tell any time about it. He wanted me to go to Mr. Wilcox, and that he would—for five hundred dollars he would win him the case; and I approached Mr. Wilcox with the offer, and with my own suggestions to him not to do anything about it. He would win him the case for that much money.

No cross-examination.

Signature waived.

Mrs. MAGGIE PAINE, a witness called on behalf of the respondent-being first duly sworn, was examined in chief by Mr. CONLY and tes, tified as follows:

Q. 1. You have testified before in regard to this collision?

A. Yes, sir.

Q. 2. Were you on board the Osborn at the time of the collision with the American Union?

A. Yes, sir.

Q. 3. Do you remember what time the Osborn left Escanaba that trip?

395 A. It was very early in the morning before we had our breakfast.

Q. 4. About what hour.

A. Well, before six o'clock. I couldn't exactly state just the very moment. That early in the morning.

Q. 5. Did you notice whether the cabin of the American Union was below deck, or on deck, or how it was built?

A. We went in through the kitchen. It was plain, the same height of the deck—the floor of the cabin and kitchen.

Q. 6. Cabin floor was same height as the deck of the vessel generally?

A. Yes, sir.

Q. 7. Do you remember whether there was any step, as you entered the cabin, up or down? Did you have to step down to get into it?

A. No, sir; I think not. I think it was perfectly level. I remember the Osborn. There was quite of a high threshold that we had to step over, and then you have one the same as that, but neither up or down.

On the Osborn there is quite a high threshold to keep the water off, I suppose, from the cabin floor.

Q. 8. How soon after the collision did you see the cabin of the American Union?

A. Very soon. It didn't take us long to get into the boat. We got on right—very close to the cabin, and as quick as I got on I went right into the cabin.

Q. 9. Were there lights in the cabin?

A. Yes; it was lit up when we went in.

396 Q. 10. Lights in more than one room of it?

A. There was a light in the kitchen as we passed through, and one in the main cabin when we went in there.

Q. 11. Could those lights be seen from forward on the vessel?

A. Well, I couldn't say about that.

Q. 12. You went on the American Union near her fore rigging, didn't you?

A. Yes, sir.

Q. 13. And went aft?

A. Went back into the cabin.

Q. 14. Did you see those lights before you got to the cabin?

A. Well, the door was open into the cabin and there was a bright light in that at that time, but whether there was windows toward the front I couldn't remember, but it was lit up when we went in.

No cross-examination.

Signature waived.

ARTHUR J. JUSTUS, a witness called on behalf of the respondent, being first duly sworn, was examined in chief by Mr. CONLY, and testified as follows:

Q. 1. Where do you reside?

A. In Painesville, Lake County, Ohio.

Q. 2. Are you acquainted with Captain Parsons, of the schooner American Union?

A. I am; yes, sir. I am acquainted with Captain Dick Parsons. I suppose he is the one.

397 Q. 3. Did you have any conversation with him in regard to the collision between the American Union and the S. S. Osborn?

A. I did; yes sir.

Q. 4. When?

A. It was, I think, the last of April in 1876.

Q. 5. Where?

A. At Painesville.

Q. 6. What did he say to you then?

(Objected to as incompetent.)

Q. What was the conversation?

A. He said to me there that Mr. Wilcox had the right of the suit, and that if he would do what was fair by him, he could win the suit for him.

Q. 7. Did he state what business he was there in Painesville on?

A. That he was there looking up the matter of the Osborn and the collision to see what he could find out about it.

No cross-examination.

Signature waived.

ROBERT MOTT, a witness called on behalf of the respondent, being first

duly sworn, was examined in chief by Mr. CONLY, and testified as follows:

Q. 1. What is your occupation?

A. Sailing, sir.

Q. 2. How long have you sailed?

A. Somewhere near fourteen or fifteen years.

Q. 3. Your age is what?

398 A. 29 in May.

Q. 4. Do you remember the collision between the schooner S. S. Osborn and the American Union in August, 1872?

A. Yes, sir.

Q. 5. Were you on board of either of those vessels at that time?

A. Yes; I was on the American Union.

Q. 6. At what time of night did the collision take place?

A. Well, I should judge it was seven or eight minutes after twelve.

Q. 7. Whereabouts were the vessels then, with reference to Beaver light?

A. Beaver light was very little abaft the beam.

Q. 8. What kind of a night was it at the time of the collision?

A. Kind of dark, hazy night—smoky night.

Q. 9. Where were you just before the collision?

A. I was on the lookout from 12 o'clock.

Q. 10. Did you notice how the vessels came together?

A. Port bows on, sir.

Q. 11. Port bows struck?

A. Yes, sir; that is what I mean.

Q. 12. How was the Osborn coming into your vessel?

A. Well, I don't understand exactly.

Q. 13. Was she ahead, or nearly ahead, or one side—how was it when you saw her coming in?

A. Well, she was very little one side.

Q. 14. How was the wind at the time of the collision for the American Union?

A. The wind was a little free, sir.

Q. 15. How were her booms at that time?

399 A. They was off over the rail, sir?

Q. 16. Did you help to make canvas on her when she left Sand Bay?

A. Yes, sir.

Q. 17. Was the mizzen made on her at that time?

A. No, sir.

Q. 18. Was the mizzen on her at the time of the collision?

A. No, sir.

Q. 19. Where did you stand when the vessel struck?

A. When they struck I was on my way aft, sir; about the mizzen rigging when the foremast started out of the Osborn.

Q. 20. Did you notice whether the mizzen was on her then?

A. Yes, sir.

Q. 21. On the Union?

A. Yes, sir.

Q. 22. Was it, or was it not?

A. It was not, sir.

Q. 23. Were any sails taken in on the Union immediately after the collision?

A. Yes, sir.

Q. 24. Which were they?

A. Fore gaff-topsail.

Q. 25. How near to the South Fox were the vessels in the morning after the collision?

A. I should judge they were within two or three miles.

Q. 26. Was there any other vessel at Sand Bay while the Union lay there?

A. No, sir.

Q. 27. What kind of a mainsail was the Union carrying at the time of the collision?

400 A. Single reef, sir.

Q. 28. Have you ever been on any other vessel that had a collision?

A. No, sir.

Q. 29. How near can a sailing vessel sail to the wind?

A. Within five points—five and a half.

Q. 30. Can't she sail within four points?

A. No, sir; at least I have never been in one that could do it.

Q. 31. There is a protest in evidence in this case, and your name is signed to it, which states that at the time of the collision the wind was northwest, and the American Union was sailing west, which makes her sail within four points of the wind remember of ever swearing to any such thing?

A. No, sir.

Q. 32. Would you have sworn to such a statement if you had known it?

A. No, sir; I would not.

Q. 33. Why?

A. Because I don't think a vessel can sail within four points of the wind.

Q. 34. In 1872 could you write?

A. Yes, sir.

Q. 35. Were you in the habit of writing your name?

A. Well, yes, sir; most always.

Q. 36. Did you sign your name to any protest in regard to this collision of the American Union and the Osborn at Escanaba or at Cleveland?

A. No, sir; that is, I didn't write my own name. No, sir.

Q. 37. Was the protest at Escanaba read to you?

A. I don't remember of its being read to us.

401 Q. 38. Do you remember whether you swore to it or not?

A. No, sir; not exactly.

Q. 39. Have you, to your knowledge, ever sworn that the wind was either northwest or northwest by north at the time of this collision?

A. No, sir; not to my knowledge, I have not.

Q. 40. Were you present when the protest at Escanaba and the one at Cleveland were drawn up and written out?

A. No, sir; I was not.

Q. 41. Do you know whether either of them was ever read to you?

A. No, sir.

Q. 42. Have you ever, to your knowledge, sworn that the sheets of the Union were flat out at the time of the collision?

A. No, sir.

(Libellant's proctor objects to the last 3 questions as leading.)

Q. 43. Did you at Escanaba, a day or two after the vessel arrived there in August after this collision, swear that the wind at the time of the collision was northwest?

(Objected to as leading and incompetent.)

A. No, sir; not to my knowledge.
Q. 44. Do you remember whether the cabin of the American Union was built on her deck or below her deck part of it?
A. It was on deck one step over the combing.
Q. 45. Did you notice whether there was a light in it or not
402 immediately after the vessels struck, or at the time they struck?
A. No, sir; I did not notice.
Q. 46. Did you go aboard of the Osborn that night?
A. No, sir.
Q. 47. From the deck of the Union could you see how the Osborn's booms were?
A. Yes, sir.
Q. 48. How soon after the collision did you notice the position of her booms?
A. As soon as she dropped alongside.
Q. 49. How did you find them?
A. Found them close-hauled.
Q. 50. If a man standing on the port quarter of the American Union was to look forward and see a light about two points on her lee bow, and had to look under the main-boom of the Union, what would that indicate in regard to the position of the boom?
(Objected to as incompetent.)
A. Indicate that the wind was free.
Q. 51. Where would the boom be?
A. Well, I don't exactly understand you. It would be off over the rail.

Cross-examination by Mr. TERRELL:

X Q. 1. You say you were the lookout of the American Union at the time of this collision, do you, Mott?
A. Yes, sir.
X Q. 2. Do you say that you were present when the protest was made at Escanaba, or don't you remember whether you were or not?
403 A. I said I was not present.
Q. 3. Weren't there at all?
A. I was there when they signed it.
Q. 4. You weren't there when it was written?
A. No, sir.
Q. 5. After the collision where did you go?
A. Dropped alongside the Osborn.
Q. 6. No, no; where did you go to? Did you go on up to Escanaba?
A. Yes, sir.
Q. 7. And then you came back here?
A. Yes, sir.
Q. 8. Remember when you got back here?
A. No; I don't remember the date.
Q. 9. Remember the date of the collision?
A. No, sir; I don't remember the date.
Q. 10. Well, you went on to Escanaba; took in a load there?
A. Yes.
Q. 11. Came back here?
A. Yes.
Q. 12. After you got back here did you go up to our office with the balance of the crew?
A. I went up to some office; I don't know whose it was.
Q. 13. Across here at 81 Public square, lawyer's office?

A. Yes, sir.
Q. 14. Was there a statement taken there of yourself and others of the crew?
A. I don't remember of hearing any statement read to me there.
Q. 15. Was there any taken there of anybody—of the captain or any of the men?
A. I don't know anything about it.
404 Q. 16. What did you go there for?
A. Well, I went there, I suppose, to sign some paper.
Q. 17. And you went there to make a statement—tell what you knew about the collision, too, didn't you?
A. I didn't understand it in that way.
Q. 18. You understood that you went there to sign some paper?
A. Yes, and that is all.
Q. You don't know what that paper was called?
A. No, sir; I didn't then.
Q. 20. Do you know whether you signed it or not?
A. Yes, sir.
Q. 21. Did you sign it?
A. No, sir; not with my own hand.
Q. 22. Did you make your mark to it?
A. No, sir.
Q. 23. Did you go through the motions of signing it at all?
A. No, sir; I stood away from where it was signed.
Q. 24. Were you asked to sign it?
A. Asked me to sign it? Yes, sir; and I told them I couldn't write; they could write it if they wanted to.
Q. 25. Didn't touch the pen?
A. No, sir.
Q. 26. Didn't say that the statement was all right?
A. No, sir; didn't say nothing about it.
Q. 27. Wasn't read over to you?
A. Don't remember of hearing it read.
Q. 28. Didn't you hold up your hand and swear?
A. I don't remember as I did.
Q. 29. Well, do you say as you didn't?
A. I can't say as I did or did not, because I don't remember.
Q. 30. I just wish you would look at that paper (handing it to the witness), and see if you made your mark to that paper.
405 A. I don't see any mark that I made, sir.
Q. 31. Do you swear that you did not make the mark in between your name there at the bottom?
A. Yes.
Q. 32. You did not make it?
A. Yes.
Q. 33. Well, when you say "yes," you mean to say that you did not make it?
A. I mean to say that I don't remember anything about it.
Q. 34. Did you have any conversation with me there?
A. I don't remember.
Q. 35. Did you have any conversation with any lawyer there?
A. No, sir.
Q. 36. Not at all?
A. No, sir.
Q. 37. You had no conversation, then, with me or any other lawyer at that office?

A. Not that I remember of.

Q. 38. Didn't you tell me there at that time that at the time of this collision the American Union was close-hauled.

A. No, sir; I don't remember telling you any such thing.

Q. 39. Didn't you tell me that you made the green light of the Osborn two points over your port bow?

A. No, sir; I don't remember telling you any such thing as that.

Q. 40. You don't remember? Will you swear that you didn't?

A. Well, I don't see that a man can swear that he didn't
406 when he don't remember.

Q. 41. Then that is the most you can say; you don't remember whether you did or not?

A. Yes.

Q. 42. Didn't you state to me there that the wind was northwest by north at the time of the collision, and had been for some time before it?

A. No, sir; I did not.

Q. 43. Didn't you swear there at that time that you had read over this statement?

A. No, sir; I did not.

Q. 44. No' I will ask you if you did not sign by your mark this protest which I have shown you, and did not swear that you had read it over, and that the statements contained in it were true?

(Protest dated August 21st, 1872, and filed May 1st, 1877, being the protest of the American Union in this cause in the district court, is exhibited to witness, and is made a part of this cross-examination.)

A. Well, I don't clearly understand you, what you want to ask.

Q. 45. You say you understood you went up there to sign something?

A. Yes, sir.

Q. 46. Well, I want to ask you just this, if, when you were over there to the law office, you did not swear that you had read over this protest which I have shown you, and that the statements contained in it were true? Didn't you so swear over there?

A. No, sir.

407 Redirect examination by Mr. CONLY:

Q. 52. Did you read over any protest in a law office here in Cleveland, at that time referred to?

A. No, sir.

Q. 53. Did you hear any read?

A. No, sir.

CLIFTON B. BEACH, a witness called on behalf of the libellants, being first duly sworn, was examined in chief by Mr. TERRELL, and testified as follows:

Q. 1. State your age.

A. 32 lawful age, you might say.

Q. 2. Residence?

A. Cleveland, Ohio.

Q. 3. Occupation?

A. Attorney at law.

Q. 4. In what office were you in August, 1872?

A. Office of Willey, Cary and Terrell.

Q. 5. As a student?

A. As a student.

Q. 6. And state whether you were a notary public at that time.

A. I was also a notary public.

Q. 7. State whether the protest of the crew of the American Union was taken before you.

A. It was acknowledged before me.

Q. 8. Look at the protest referred to in the cross-examination of the witness Mott, and state whether that is the original protest of the
408 officers and crew of the schooner American Union, taken before you?

A. It is.

Q. 9. State whether Robert Mott, the lookout of the American Union, swore to that protest before you.

A. It would be difficult for me to swear that any of the witnesses whose names appear upon this protest, from my recollection of the event, did actually swear to it; I think, however, that there is no doubt (there is no doubt in my mind) but that all of the parties whose names are attached to the protest were sworn, and did certify to the truth of the statements in the protest.

Q. 10. State whether you remember the name of Robert Mott, as being the name of one of the parties who was present at that time?

A. I do; very distinctly.

Q. 11. State whether this protest was read over to the parties who subscribed and swore to it.

A. My best recollection is that the protest was read to these parties, and I should say that it was read from this fact alone that I have so certified.

Cross-examination by Mr. CONDON:

X Q. 1. Where and how have you certified to the fact that this protest was read over to Robert Mott?

A. In the notary's certificate, being part of the blank protest.

X Q. 2. Aside from that, can you swear from your recollection that that protest was read over to Robert Mott?

A. I will answer that directly first by saying no. I wish to modify that a little, however, by saying that in certifying to a great
409 number of documents, as I did while in the office of Willey, Cary and Terrell, it is impossible for me to recollect positively all of the events and circumstances connected with the execution of each paper; that I am entirely satisfied in my own mind that the protest was read to these witnesses, that they were given a fair opportunity to know and understand the statements of the protest, and that they swore to the same before me with such knowledge, and that I have no doubt but that Robert Mott executed or signed the statement as it appears as present.

X Q. 3. The protest is no in your handwriting, is it?

A. The body of it is not; no, sir, simply the certificate.

X Q. 4. By that you mean the jurat?

A. Well, I believe some of the filling in of the blanks of the certificate were mine too. No, just the jurat; that is so; and the words "his mark."

Q. 5. Am I to understand, and do you wish to convey the idea to the court, by your explanation added to your direct reply to the second cross-interrogatory, that you wish to swear to anything positively as to what is contained in the acts stated by you in this jurat and "his mark" to Mott's signature?

A. I am only able to swear positively from my recollection at present of the circumstances to what appears upon the certificate of protest; I

am not able to swear positively that the protest was read over to any of the parties who signed it; nor am I able to swear positively that the signatures to the protest were written by the parties themselves. My best recollection and opinion, however, is, that it was executed as
410 it purports to be, and that the protest was read over to the parties.

X Q. 6. And your opinion that it was read over to the parties, I understand you to have said, is based upon the fact, as you claim, that you have certified to that effect in this protest?

A. I have so stated, or rather I have stated that the fact alone of my having certified to the protest in the form there is sufficient to satisfy my mind that all that is claimed to have been done was actually done. I say I state that as one reason. I have also a recollection—not, however, sufficiently positive to make me feel like swearing to it—that the protest was read over to all the parties and signed by all the parties, and that the words "his mark" over the signature of Robert Mott were written by myself. I remember further that Mott was the only man of the crew who was unable to write his name. That appears upon the record; but since I have thought it over, it comes back to me that he was the only man there that could not write his name.

X Q. 7. Well, do you understand that this protest, or any statement in it, is to the effect that you certified that it was read over to these witnesses, or any of them?

A. No, I do not.

X Q. 8. All you do is certify that they swore to it before you?

A. That is all.

X Q. 9. Now, do you remember anything about what time of the day or what day of the week that was done?

A. Do not, sir.

X Q. 10. Any of the circumstances?

411 A. Simply that I know that the office was full of sailors.

X Q. 11. Do you know whether you were in the room when they signed it or not?

A. Yes.

X Q. 12. All of them?

A. Don't know that.

X Q. 13. Do you know whether you heard anything more about it than that you were called in to swear the witnesses to it?

A. Yes; I know that I heard the substance of these statements—the statements of the protest talked over at length between Mr. Terrell and the captain and crew of the American Union.

X Q. 14. You have acted as attorney in this case, haven't you?

A. No, sir.

X Q. 15. Didn't you go to South Haven to take the deposition of Burns?

A. No, sir.

X Q. 16. Weren't you present at the taking of that deposition?

A. No.

H. L. TERRELL, being duly sworn, testified on behalf of the libellants as follows:

I wish to make a statement in respect to this protest—first, that it is in my handwriting, and that I personally took the statements of the officers and the crew; that before the protest was drawn I conversed with each member of the crew separately and took each one's version of the collision; that after that I drew up this protest; that after I

had drawn it up I called them all into the same room together,
412 told them that I was going to read them the protest, and wanted to have them listen to it, and that I read it to them; that Robert Mott was present, together with the balance of them; that I then told them to go into the first room, at Mr. Willey's desk, where, I think, Mr. Beach was then sitting, and sign the protest; that all the others except Robert Mott subscribed each his own name, and that when I called upon Robert Mott to sign he said he could not write his name; I told him I would write it for him; that I wrote the name of Robert Mott, and he made his own mark; that prior to the drawing of the protest I had a conversation with Robert Mott in respect to the collision. I remember him well, and knew who he was when he came into the room this afternoon, and that in his statement to me prior to the writing of this protest he told me unequivocally that the American Union was close-hauled at the time of this collision, and had been for some time prior; that her sheets were hauled aft when she rounded Beaver Island. He also told me that the wind was northwest by north; and he also told me that he, as lookout, made the green light over the port bow. This was on the same day that the protest was signed and executed. I cannot say how long; but the master and crew were there some time; several hours possibly.

Cross-examination by Mr. CONLY:

X Q. 1. Was there anything about Robert Mott's statement which attracted your attention more than any of the rest of the crew?

A. No, sir.

X Q. 2. Can you recollect what every member of the crew said to you?

A. I can't recollect the exact language; no, sir. I recollect the substance of it. I can recollect this, however—that there was not a
413 particle of disagreement from the captain to the cook through the whole crew—that they every one told the same story to me.

X Q. 3. That is how you come to state that Robert Mott stated these things?

A. No, sir. I remember him just as well as I remembered you when I saw you to-day, and, of course, while I cannot give the exact conversation after this lapse of time, I do remember the substance of the statements of each of those men. I remember his stating when the vessels got pretty near together he started from the lookout and ran aft; I remember his stating that to me in that conversation.

X Q. 4. Well, you remember that it was stated by the crew that the Union's sheets were flat aft, and that the Osborn's lights bore two points on the lee bow.

A. I would not swear that each one of them said two points on the lee bow. They all of them said on the port bow. That, to my present recollection, would not enable me to to say that each one of them said two points on the port bow. However, all of them said on the port bow.

X Q. 5. Your recollection is that this protest was drawn by you as the substance of the statements of all of them?

A. Oh, yes, sir; I think that there are one or two things, possibly, stated in the protest that all of them didn't know; but upon those points—upon their being close-hauled, and upon the direction of the wind, and upon making the light over their port bow—that was something they all recollected, as far as their statements were taken; recollected seeing the light on the port bow when they saw it. Of course

they didn't all claim that they made it instantaneously at the same time.

X Q. 6. Did you write out the statement of each witness in re-
414 gard to the collision at that time?

A. My recollection is that I did not.

X Q. 7. Can you swear whether they were all present when this original protest was written down by you?

A. What do you mean, all in the room?

X Q. 8. Yes, sir.

A. Oh, I couldn't swear that they were all in the room during all of the time I was writing, of course not. They might have stepped out to the front door, or out in the hall.

X Q. 9. Some may have been left on the vessel and sent for?

A. Oh, I think not; I think they were all about at that time.

X Q. 10. Is your recollection any more definite than this, that when the statement was drawn up as it is in that protest, and you say read to them, none of them made any objections to it nor found fault with it?

A. I don't know that I get the exact import of the question.

X Q. 11. (Question read.)

A. Well, that is true; when it was read none of them did make any objection or find fault. I remember other things; I remember talking with every man of them separately, if that is what you mean. If it was pertinent to the inquiry I could tell you why, too.

X Q. 12. You recollect what the others said, as well as what Mott said?

A. Oh, the substance of it, yes.

X Q. 13. And the substance of your testimony in regard to that would be that his statement did not differ materially from any of the rest?

A. On the points that he covered it would not. It was substantially the same.

Filed M'ch 12th, 1878.

415 *Appeal dismissed.—Order entered January term, A. D.* 1878.

This cause came on to be heard upon the motion of the libellants to dismiss the appeal of Bliss O. Wilcox, claimant and appellant, and was argued by counsel; and the court, the honorable John Baxter, circuit judge, presiding, being fully advised in the premises, doth find that the appeal herein was not perfected according to law, inasmuch as no appeal in writing, as provided in the 23rd rule of the district court in admiralty, was filed by the appellant within the time prescribed by the special order of the district court in said cause.

And thereupon the court doth order that the motion to dismiss said appeal be sustained, and that said appeal be, and the same hereby is, dismissed.

Filed March 12th, 1878.

416 *Motion to vacate order of dismissal.*

In the circuit court of the United States for the northern district of Ohio.

WM. G. WINSLOW AND H. J. WINSLOW, libellants, *vs.* SCHOONER S. S. OSBORN, BLISS O. WILCOX, claimant.	Appeal in admiralty. Motion to vacate order of dismissal.

Now comes the said Bliss O. Wilcox, appellant, by Prentiss and

Vorce, his proctors, and moves the court here to vacate and set aside the order and judgment dismissing the appeal in this cause, and to reinstate this cause upon the docket for trial in this court; and for cause for granting this motion the said appellant avers and shows to the court as follows, to wit:

1st. That from the time of the giving of the appeal bond in this cause, on the 12th day of January, 1878, the libellants and their proctors have well-known that the said bond was so given, and that the transcript of the record was being prepared herein to be filed in this court in pursuance of the appeal of this cause to this court, and that the said record was duly filed in this court on the 26th day of February, A. D. 1878.

That they have also well known during the time above named
417 that the appellant intended to make new and additional proofs in this cause in this court on such appeal.

That during all the time above named it has been understood and agreed between the proctors for the libellants and the proctors for the appellant, that this cause should be tried in this court at the present term thereof; and in pursuance of such understanding, it was agreed between the proctors for appellant and proctors for libellants on Monday, March 4th, when this cause was called for trial, that the same should be tried on Monday, March 11th, or the following day.

That, in pursuance of such understanding and agreement, the proctors for the libellants agreed with the proctors for the appellant, about 10 o'clock a. m. of Monday, March 11th, to attend to the taking of new testimony in this case at 2 o'clock p. m. of that day, and did accordingly attend to the taking of the same on behalf of the appellant, and also introduced new evidence in behalf of said libellants before the commissioner before whom said testimony was taken.

That neither said libellants or their proctors have been in any respect misled or prejudiced.

That, in accordance with said understanding, the appellant has gone to great expense in preparing for the trial of this cause, and was then ready for trial.

2nd. That this cause was duly appealed to this court and bond duly given therein on the 12th day of January, 1878, and the record
418 therein duly filed in this court on the 26th day of February, 1878; and that no evidence was introduced, or admissions made in support of the motion filed by the libellants for the dismissal of the appeal in this case, and that the allegations of the same that no appeal was filed or perfected in said district court are untrue.

3rd. That the court erred in the granting of said motion to dismiss, and in dismissing the appeal in this case.

PRENTISS AND VARCE,
Proctors for Appellant.

Filed March 15th, 1878.

Affidavit on motion to reinstate appeal.

U. S. circuit court, northern district of Ohio, ss. In admiralty.

W. G. AND H. J. WINSLOW } Affidavit.
vs.
SCHOONER S. S. OSBORN. }

NORTHERN DISTRICT OF OHIO, *ss:*

CHARLES H. BILL, being duly sworn, says:

That he is, and for several years last past has been, deputy clerk of

the district court of the United States for the northern district of Ohio.

That in the above-entitled cause, when in the district court, no appeal in writing was filed within twenty days from the date of
419 the final decree therein in said district court, viz, December 26th, A. D. 1877, nor has any appeal in writing ever up to this date, been filed in said district court by Bliss O. Wilcox, claimant and appellant, or by any other person whomsoever.

That, on the 27th day of February, 1878, and not before, as appears by the files of this case in this court, an appeal in writing was filed in this court in this case, which is the only appeal in writing, or paper purporting to be such, ever filed in this cause in either the district or circuit court for this district by Bliss O. Wilcox, appellant, or by any other person whomsoever.

CHARLES H. BILL.

Sworn to and subscribed before me this 16th day of March, A. D. 1878.

GEO. WYMAN,
Commissioner Circuit Court, Northern District of Ohio.

Filed March 16th, 1878.

Order dismissing appeal set aside.

And afterwards, at the January term, A. D. 1878, of said court, to wit, on March 16th, the following order was entered:

This cause came on to be heard upon the motion of Bliss O. Wilcox, claimant of said Schooner S. S. Osborn and appellant, to set
420 aside and vacate the order of this court, dismissing his said appeal made and entered on the 12th instant, and the affidavits in support of said motion, and was argued by the proctors of the respective parties.

On consideration whereof, the court, the honorable circuit judge presiding, doth find that, notwithstanding said appeal was not perfected in accordance with the rules of said district court, yet the court, being of opinion that the irregularity in said appeal has been waived by the appellee, doth order that this cause be reinstated on the docket of this court; and thereupon come said appellees, by Mr. Terrell, their proctor, and excepts to the said ruling and order of the court; and it is further ordered that both parties be allowed to take new testimony to be used on the trial of this cause; and this cause is continued to the next term of this court.

421 And afterwards, to wit, on March 29th, 1878, in the city of Chicago, before W. A. Ruff, a notary public, the following testimony was taken:

JOHN G. KIETH, a witness on behalf of the appellant, having been first duly sworn, was examined in chief by WM. H. CONDON, Esq., and testified as follows:

Q. 1. What is your name, age, residence, and occupation?

A. John G. Kieth; age, 34 or '5; reside at Chicago; and occupation, a vessel-maker.

Q. Did you know the schooner Wm. Sanderson?

A. I did know her.

Q. Have you ever cleared from Duncan City; and if year, about how often?

A. I have cleared from Sheboygan—which is the same as Duncan City,

one custom-house answering both places, which are only about two miles apart—possibly about eight times, I should say. I was there and loaded and cleared in 1872.

Q. Did you know anything about the sailing qualities of the Sanderson, about the speed she could attain, whether she was a fast-sailing vessel or not?

A. She was not considered a fast-sailing vessel of her class, and of an inferior class for sailing qualities, being known as a canal vessel.

Q. If the schooner Wm. Sanderson cleared from Duncan City on August 9th, 1872, could she have with a southwest wind sailed to Sand Bay by 10 o'clock in the forenoon of that day?

A. No, sir.

Q. Why not?

422 A. For the reason the distance is too great, being about 56 miles, and wind being ahead, it was an utter impossibility.

Q. Did you know the schooners American Union and S. S. Osborn in 1872?

A. Yes, sir; I have known them from their existance as vessels.

Q. Suppose that the Osborn and the American Union, one bound for Escanaba and the other for Erie, were to meet about four miles westward of Beaver Island light; that the Osborn were loaded with iron ore and was without canvas, carrying no canvas; and that the American Union was under short canvas, with reef mainsail and no mizzen, and being light, were lashed alongside the Osborn, her bow to the Osborn's stern; and that her wheel were lashed hard down, and that they were drifting for about four hours in that condition, that the vessels were within about four miles of the dock on the South Fox, how was the wind while they were so drifting?

A. The wind would be from north to north northeast.

Q. If the wind had been northwest by north during that time while they were so lashed together, where would the vessels have gone to during those four hours?

A. They would drift in a southeast by south direction from the point of collision, which would be towards Traverse Bay, and eleven or twelve miles east of South Fox Island.

Q. Would not having no mizzen-mast on the Union and carry-

423 ing her foresail, reef' mainsail, two jibs and fore-gaff topsails, have a tendency to make her head pay off before the wind?

A. It would have that tendency.

Q. Which would those vessels drift or headreach most lashed together and carrying canvas as stated in the previous question?

A. It would be all drift, and little or no headreaching.

Q. Did you know the schooner Philo Scorille in 1872?

A. I did.

Q. What was her rig at that time?

A. What was known as a fore-aft two-mast schooner.

Q. Do you know whether she had any squaresail or not?

A. I couldn't say, but I think she had a squaresail.

Q. If such a schooner were on a voyage from Buffalo to Chicago, and were two or three miles to southward of South Manitowa Island and had a sever or eight knot breeze from north, or north by east, would she wing out at or would she keep both her booms on one side if she was sailed with ordinary prudence?

A. It wouldn't be considered good seamanship to wing a vessel out of her size and rig.

Q. Why not?

A. For the reason that when a vessel is winged out that has a boom on each side you then have two evils to guard against, where with them on one side you have but one, a vessel winged out can vary but a point or two until her sails would jibe; and in that case would incur the risk of breaking the booms, tearing the sails and dismasting the
424 vessel, and in meeting vessels you haven't the same liberty to deviate from your course to avoid them, and in a dark night it is always considered a proper and safe way to guard the booms both on one side.

Q. In the case of a vessel bound to Chicago, with the wind either north or north by east, would she ordinarily steer her course, which was south by west half west?

A. No, sir.

Q. Why not?

A. It is always customary and necessary to have your vessel a couple of points to either side so as all sails will draw.

Q. If a vessel bound from Rocky Island passage to Beaver Island is to leeward of her course when back of the North Fox and is hauled up northeast, and her mainsail shakes, and she is kept east northeast, and sails on that course for an hour and a half, the vessel being able to sail within five and a half or six points to the wind, in what direction had she the wind during that time?

A. She had the wind from the north to north by east.

Q. If she were to the leeward of her course, would she ordinarily sail as close to the wind as she could until she made up her leeway?

A. Yes, sir.

Q. If the wind were northwest by north, would the mainsail of the vessel stated shake when hauled up northeast?

A. It should not.

Q. Why?

425 A. Because she would be seven points from the wind, or have the wind a point and a half free.

Q. In the case of the vessel supposed, if she were to pass Beaver light about a mile and a half distant, and were to sail by the wind on the port tack and should in two hours have the Skiligale light one point on her weather bow, what course must she have steered from off Beaver light?

A. An east-northeast course.

Q. If a vessel while sailing by the wind breaks off her course half a point, how does that indicate that the wind has changed?

A. A like amount, as the wind in both cases would be the governing influence.

JNO. G. KEITH.

Subscribed and sworn to before me this day of , A. D. 1878.

W. A. RUFF, [SEAL.]
Notary Public.

JOHN SUTHERLAND, the next witness called, having been first duly sworn, was examined in chief by WM. H. CONDON, Esq., and testified as follows:

Q. State your name, age, residence, and occupation.

A. John Sutherland; age, 43; reside in Chicago, and by occupation master of a vessel.

Q. How long have you been a master of vessels?

A. About eight or nine years.

Q. How long have you sailed, altogether, on the lakes?

426 A. Going on 23 years.

Q. Did you know the schooner Wm. Sanderson, and her qualities as a fast or slow sailing vessel?

A. I have known her, and her general character was that she was a very poor sailer.

Q. If she cleared from Duncan City on August 9th, 1872, could she with a southwest wind have sailed to Sand Bay by ten o'clock in the forenoon of that day?

A. I am satisfied she never could.

Q. Why?

A. Because the distance is too great—it being about 55 or 56 miles from Duncan City to Sand Bay.

Q. Did you know the schooners American Union and S. S. Osborn in 1872?

A. I have known them ever since they came out.

Q. Suppose that the Osborn and the American Union, one bound for Escanaba and the other for Erie, were to meet about four miles to westward of Beaver Island light; that the Osborn were loaded with iron-ore, and was without canvas, carrying no canvas, and that the American Union was under short canvas, with reef mainsail and no mizzen, and being light were lashed alongside the Osborn, her bow to the Osborn's stern, and that her wheel were lashed hard down, and that after drifting for about four hours in that condition that the vessels were within about four miles of the dock on the South Fox, how was the wind while they were so drifting?

427 A. The wind must have been about north by east or north northeast to drift in the manner they drifted.

Q. If the wind had been northwest by north during that time, while they were so lashed together, where would the vessels have gone to during those four hours?

A. They would have drifted over towards Cathead Point Traverse Bay.

Q. Would not having no mizzen on the Union and carrying her foresail, reef' mainsail, two jibs, and fore-gaff topsail have a tendency to make her head before the wind?

A. It would have.

Q. Which would those vessels drift or headreach the most, lashed together and carrying the canvas stated in the previous questions?

A. I am satisfied that two vessels in the condition mentioned would drift (10) ten miles to leeward for every mile they would headreach or go ahead.

Q. Did you know the schooner Philo Scoville in 1872?

A. I did. I have been often in company with her between here and Buffalo.

Q. What was her rig at that time?

A. She was a two-masted schooner, full rigged, square sail and reeffee sail.

Q. If a schooner of that rig were on a voyage from Buffalo to Chicago, and were to the southward of South Maintowa Island two or three miles, and had a 7 or 8 knot breeze from north, or north by east, would she wing out or would she keep both her booms on one side?

428 A. She would certainly keep both booms on one side.

Q. Why?

A. Because winging a vessel out is a dangerous condition to have a vessel in. There is danger of jibing her sail, and it is hard to avoid

vessels that you may meet, in that condition with the sails, because you can't vary her course much without causing damage by the jibing sails.

Q. What damage is likely to accru' by jibing of sails when winged out?

A. Breaking of booms and also dismasting the vessel. It has happened frequently.

Q. In the case of a vessel as described in the 3rd previous question, having the wind north or north by east, bound for Chicago, if she had both her booms on the same side, would she ordinarily steer her course south by west half west?

A. She would not.

Q. Why not? And about what course would she steer?

A. Because the wind would be so much after her that the mainsail would be calmed—all the sails forward of it. It is a general practice to alter the vessel's course to either side of the true course so that all her sails will draw, that is, about a point and a half or two points.

Q. If a vessel bound from Rocky Island passage to Beaver Island is to leeward of her course when back of the North Fox, and is hauled up northeast, and her mainsail shakes and she is kept east northeast,
429 and sails on that course for an hour and a half, the vessel being able to sail within 5½ or 6 points to the wind, in what direction was the wind during that time?

A. The wind must have been north or north by east.

Q. If she were to leeward of her course, would she ordinarily sail as close to the wind as she could till she got on her course?

A. She certainly would have to do so in that neighborhood if she didn't want to get ashore on the North Fox.

Q. If the wind were northwest by north, would the mainsail of the vessel stated shake when hauled up northeast?

A. It would not, because she would be seven points from the point where the wind blows from, and she would have it from a point to a point and a half free.

Q. In the case of the vessel supposed, if she were to pass Beaver light about a mile and a half distant, and were to sail by the wind on the port tack, should in two hours have the Skiligalee light one point on her weather bow, what course must she have steered from off Beaver light?

A. She must be making about an east-northeast course.

Q. If a vessel sailing by the wind breaks off from her course half a point, how much does that indicate that the wind changed?

A. It indicates that the wind has shifted half a point.

CAPTAIN J. SUTHERLAND.

430 Subscribed and sworn to before me this 29th day of March, A. D. 1878.

WM. RUFF, *Notary Public.*

PETER MCCULLOUGH, the next witness called, having been first duly sworn, was examined in chief by Mr. CONDON, and testified as follows:

Q. State your name, age, residence, and your occupation.

A. Peter McCullough; age, 45; residence, Chicago, and master of vessel by occupation.

Q. How long have you sailed, in all capacities?

A. 30 years.

Q. How long have you been master of a vessel?

A. Six years.

Q. How long mate?

A. About five years on the lakes, and several years on salt water.

Q. Did you know the schooner Wm. Sanderson?

A. Yes, sir.

Q. What kind of a sailer was she?

A. Well, she was generally considered a pretty dull sailer of her class; she was a canal schooner.

Q. If she cleared from Duncan City on Aug. 9th, 1872, could she with a southwest wind have sailed to Sand Bay by ten o'clock in the forenoon of that day?

A. No, sir.

Q. Why not?

431 A. The distance is too far for a vessel of her capacity and sailing qualities to reach that distance with a partially heavy wind.

Q. Did you know the schooner American Union, and S. S. Osborn in the year 1872?

A. Yes, sir.

Q. Suppose that the Osborn and the American Union, one bound for Escanaba and the other for Erie, were to meet about four miles to the westward of Beaver Island light; that the Osborn were loaded with iron-ore, and was without canvas, and that the American Union was under short canvas, with reef mainsail and no mizzen, and being light were lashed alongside the Osborn, her bow to the Osborn's stern, and that the Union's wheel was lashed hard down, and that after drifting for about four hours in that condition, that the vessels were within about four miles of the dock on the South Fox, how would you say the wind was during those four hours?

A. Well, to the best of my judgment, the wind must have been from north by east to northeast.

Q. If the wind had been northwest by north during that time, while they were so lashed together, where would the vessels have gone to during those four hours?

A. They must have drifted toward Cathead Point or Traverse Bay, with the wind in that direction in those four hours.

Q. Would the fact of the Union carrying no mizzen, and carrying her foresail and reef mainsail, fore-gaff topsail, and two jibs have

432 a tendency to make her head pay off before the wind?

A. Yes, sir.

Q. Which would those vessels drift or headreach most, lashed together, carrying canvas as stated in the previous questions, being in the condition stated?

A. Well, I think it would be all drift and very little headreaching.

Q. Did you know the schooner Phil Schoville, in 1872?

A. Yes, sir.

Q. What was her rig at that time?

A. She was a fore-aft two-masted schooner.

Q. Do you know whether she had any squaresail or not?

A. She carried a squaresail and raffee.

Q. If a schooner of that rig were on a voyage from Buffalo to Chicago, and were two or three miles to the southward of South Manitowa Island, and had a seven or eight knot breeze from north or north by east, would she wing out?

A. No, sir.

Q. Why not?

A. It is considered not safe to wing out a schooner of that class.

Q. What dangers attend it?

A. There is danger of jibing, carrying away her booms, tearing sails, and dismasting the vessel.

Q. Is it easy to get canvas off a vessel when she is winged out, in case of a squall?

433 A. No, sir; it is much more difficult to handle a vessel winged out than when both booms are on one side.

Q. How is it in regard to her ability to avoid vessels she is meeting when winged out?

A. She is liable to jib and alter her course a point or two points, apt to jib over and do damage.

Q. When a two-masted schooner bound from, say, South Maintowa Island to Chicago has a seven or eight knot breeze from north or north by east, if she carry both her booms on the same side, would she ordinarily steer her course, which is south, south by west half west?

A. No, sir; she would alter her course from a point and a half to two points.

Q. For what purpose?

A. To keep the sails dry.

Q. If a vessel bound from Rocky Island Passage to Beaver Island is to leeward of her course when back of the North Fox, and is hauled up northeast, and her mainsail shakes and she kept east northeast, and sails on that course for an hour and a half, the vessel being able to sail five and a half or six points to the wind, what direction does that indicate that she has the wind?

A. About north, or north half east.

Q. If she were leeward of her course would she ordinarily sail as close to the wind as she could to overcome that leeway and get on her course?

434 A. Yes, sir; she would get on her proper course.

Q. If the wind were northwest by north would the mainsail of the vessel stated shake when hauled up northeast?

A. No.

Q. Why not?

A. She would be a point or a point and a half free.

Q. In the case of the vessel supposed, if she were to pass Beaver Island about a mile or a mile and a half distant, and were to sail by the wind on her port tack, and should in two hours have a Skiligalle light to bear one point on her weather bow, what course must she have steered from off Beaver light?

A. Almost east northeast.

Q. If a vessel when sailing by the wind breaks off from her course a half a point, does that indicate how much the wind has changed?

A. Yes, sir; it indicates that the wind has shifted half a point.

PETER McCOLLOUGH.

Subscribed and sworn to before me this day of , A. D. 1878.

W. A. RUFF,
Notary Public.

435 *Motion to dismiss appeal.*

U. S. circuit court, northern district of Ohio. In admiralty.

W. G. AND H. J. WINSLOW, *vs.* SCHOONER S. S. OSBORN. } Motion to dismiss appeal.

And now come the said libellants, by R. P. Ranney and H. L. Terrell, their proctors herein, and move the court to dismiss the appeal of Bliss O. Wilcox, claimant herein, and for cause say:

That appeals in admiralty from the district to the circuit court of the United States in said district are governed and provided for by the 23rd rule of said district court in admiralty, which rule read as follows:

"Appeals in admiralty to the circuit court shall be taken within ten days from the date of the decree, unless further time be given by special order of the judge. The appeal shall be in writing and shall specify particularly from what part of the decree, if less than the whole, the appeal is taken. Also, whether it is intended to make new allegations or proofs, and, if so, what, and whether it is intended to pray for any other relief, and, if so, what; and on the trial above the appellant shall be strictly confined to the specifications in his appeal. Either or both parties may appeal in this manner, and no answer shall be re-

436 quired from the appellee, but for any irregularity he may except or move to dismiss. The appeal shall be filed with the clerk of the district court, and from that time, security having been given, it shall be considered as perfected; and it shall be the duty of said clerk, within twenty days, unless a longer time shall be allowed by the district judge, to prepare and deliver to the clerk of the circuit court, together with said appeal, the records in such case required by the 53rd rule of the Supreme Court, and when this is done so much of the case as is appealed shall be in the exclusive control of the circuit court.

"With a view to provide for the certifying of testimony in case of appeal, the court shall, unless otherwise agreed by the parties, cause all oral testimony to be reduced to writing as the trial progresses, either by the judge, the clerk, or a commissioner designated for that purpose, the cost of which shall be taxed in the bill of costs, and such testimony shall stand upon the same footing as depositions and be certified up accordingly.

"Upon written application to the court from which the appeal is to be taken, proceedings in execution may be suspended until the time for perfecting the appeal shall have elapsed. The amount of security to be given by the appellant shall be fixed by the court from which the appeal is taken, and its sufficiency shall be approved by the court if given in term time, otherwise by the clerk."

437 That, by order of the district judge, the of claimant for perfecting his appeal herein was extended to twenty days from the date of the final decree of said district court herein, to wit, December 26th, 1877, and expired on the 15th day of January, 1878, at which time no appeal in writing had been filed by said claimant, or any person in his behalf, in said district court, as required by said rule; and, in fact, no appeal in writing, or otherwise, was ever filed herein in said district court, nor was any appeal in writing ever filed in this cause until the transcript was filed and the case was docketed in this court, to wit, on the 27th day of February, 1878, one month and 12 days after the expiration of the time allowed for filing the same, and

said appeal was then filed in this court instead of said district, as required by law.

Wherefore libellants pray that the appeal herein be dismissed.

R. P. RANNEY.
WILLEY & TERRELL,
Proctors for Libellants.

Filed June 12th, 1878.

Exception and motion of Bliss O. Wilcox.

In the circuit court of the U. S. for the N. D. O.

W. G. & H. J. WINSLOW *vs.* SCH'R S. S. OSBORN. } Exception and motion of Bliss O. Wilcox, claimant and appellant.

438 Now comes the appellant, Bliss O. Wilcox, and excepts to the motion of said libellants filed in this cause June 12th, 1878, for the dismissal of the appeal in this cause, and moves the court here to strike said motion from the files in this cause; and for reason he says:

That on the 11th day of March, 1878, said libellants filed in this cause their motion for the dismissal of the appeal in this cause, which motion was based upon the identical grounds set up in said motion filed June 12th, 1878, and upon no other grounds.

And on the 12th day of March, 1878, said former motion to dismiss said appeal was heard and granted; and on the 12th day of March, 1878, said appellant filed in this court his motion to vacate said order of this court granting said motion and dismissing said appeal, upon the ground that the said libellants had been in no wise misled or prejudiced by any irregularity in perfecting said appeal, and had waived any such irregularity, which motion of the appellant to set aside and vacate said order dismissing said appeal was, on the 16th day of March, 1878, after full hearing upon evidence, granted, and said order dismissing said appeal was vacated and set aside, and said appeal reinstated, and this cause continued.

Whereupon appellant says that the matters set forth in the motion of said libellants filed June 12th, 1878, have already been heard and determined by this court, as by the files and records of this court in
439 this cause will appear, and that said former determination is a bar to said motion filed June 12th, 1878.

The said appellant denies the allegations of said motion filed June 12th, 1878, as to the perfecting of said appeal, and avers that said appeal was in fact perfected by him prior to the 15th day of January, by the allowance of the appeal by the said district court at the time the decree was rendered, and by the giving of bail therein prior to said 15th day of January, according to law, and by the filing of the record herein and docketing of this cause in this court at the term thereof next after the rendering of said decree in the district court, as soon as the clerk of said district court was able to make up said record ready for such filing.

Said appellant denies that his right of appeal herein can be limited or controlled by the provisions of said 23rd rule of said district court in the matter in said motion set forth, or that the filing of the papers therein named, called the appeal, is necessary in law to the perfecting of said appeal; and he avers that if the filing of such a writing in said district court can be legally required, the omission of the same is a

mere irregularity, which may be waived, and he avers that the same was waived in this cause as found and decided, as hereinbefore set forth.

PRENTISS AND VORCE,
Proctors for Appellants.

440 In the circuit court of the United States for the northern district of Ohio.

THE STATE OF OHIO,
Cuyahoga County, ss:

W. G. WINSLOW ET AL., LIBELLANTS,
vs.
SCH'R OSBORN AND BLISS O. WILCOX, claimant.

The libellants will take notice that on Friday, the 13th day of September, A. D. 1878, the above-named claimant will take the depositions of Lydia Wilcox, C. Rewell, J. E. Bailey, and sundry witnesses, to be used as evidence on the trial of the above-entitled cause, at the office of A. J. Ricks, clerk of said court, in the city of Cleveland, county of Cuyahoga, and State of Ohio, at 9 a. m. sharp of said day, and the taking of the same will be adjourned from day to day, between the same hours, until they are completed.

PRENTISS AND VORCE,
Attorneys for Respondent and Cross-Libellant.

I acknowledge service of the above notice by copy, this 12th day of September, 1878, and waive the 24 hours' protesting against right to take depositions, and not waiving motion to dismiss.

H. L. TERRELL.

441 STATE OF OHIO,
Cuyahoga County, ss:

Charles H. Cunie, being duly sworn, on his oath says that he served the original notice within by delivering a true copy thereof to T. K. Bolton, in the office of H. L. Terrell, libellants' proctor, and leaving said copy of the within notice on said Terrell's desk in his said office, at 5 o'clock p. m. on September 11th, 1878.

CHARLES H. CUNIE.

Subscribed in my presence and sworn to before me by the said Charles H. Cunie, this 12th day of September, 1878.

JAMES LAURENCE,
Notary Public.

In the circuit court of U. S. for the northern district of Ohio, within and for the county of Cuyahoga and State of Ohio.

THE STATE OF OHIO,
Cuyahoga County, ss:

W. G. WINSLOW ET AL., LIBELLANTS,
vs.
SCHOONER OSBORN, BLISS O. WILCOX, CLAIMant.

The libellants will take notice that on Thursday, the 12th day of Sep-

tember, A. D. 1878, at 9 a. m., the above-named claimant will take the depositions of Lydia Wilcox, C. Rewell, J. E. Bailey, and sundry witnesses, to be used as evidence on the trial of the above-entitled cause, at the office of A. J. Ricks, clerk U. S. circuit court, in the city of
442 Cleveland, county of Cuyahoga, and State of Ohio, at 9 o'clock a. m. sharp of said day, and that the taking of the same will be adjourned from day to day, between the same hours, until they are completed.

PRENTISS AND VORCE,
Attorney' for Respondent.

I acknowledge service of the above notice, by copy, this 11th day of September, 1878, at 4 p. m.

H. C. TERRELL,
Attorney for Libellants.

Circuit court of the United States, northern district of Ohio.

W. G. WINSLOW ET AL., LIBELLANTS,
vs.
SCH'R OSBORN, BLISS O. WILCOX, CLAIMANT. } Appeal in admiralty.

Depositions of John E. Bailey, Cornelius Rewell, and Lydia Wilcox, taken in behalf of the claimants, in pursuance of the notice hereto attached, at the clerk's office of said court, before A. J. Ricks, U. S. commissioner, on Thursday, September 12th, A. D. 1878, beginning at 4 p. m., in the city of Cleveland.

The witness JOHN E. BAILEY, a witness for claimant, being first duly sworn according to law, deposeth and saith:

Q. 1. (By proctor for claimant.) What is your name, age, residence, and occupation?

443 A. My name is John E. Bailey; my age is nearly 61; and my residence Toledo, Ohio; and my occupation is ship-builder.

Q. 2. Do you know Charles O. Ingraham, who was mate of the American Union when she collided with the schooner S. S. Osborn; and, if yea, state how long you have known him?

A. I have no acquaintance with him; never have seen him to my knowledge. I only know him by reputation.

Q. 3. Are you one of the bondsmen for the schooner S. S. Osborn in the case of Wm. G. Winslow et al. vs. the schooner S. S. Osborn, or were you in the district court?

A. Yes; I bonded her as one of the bondsmen when she was tied up.

Q. 4. Did you ever write to the said Charles O. Ingraham upon any matter connected with this case; and, if yea, when, and for what purpose?

A. I did; and I think it was in the winter of 1875–'6, or in the spring 1876. I wrote to him for the purpose of having him attend court here in Cleveland as a witness in this case, thinking that would be cheaper than to send up there to take his deposition.

Q. 5. Did you send him any money; and, if yea, how much, and for what purpose?

A. I sent him $33.00 for the purpose of giving him some to leave with his family to keep them during his absence, and the balance to pay his expenses here. I learned he was poor.

Q. 6. Have you, or any one on your behalf, paid him any more money, or anything else of value, for coming here to give his testimony; and, if yea, how much?

444 A. He got five dollars from my wife on his way down here, and he has received nothing more from me, nor from any one else, that I know of.

Q. 7. Why did you send him that amount of money, and why did you want him to be examined on behalf of the Osborn?

A. I sent him that money because I heard he would testify favorable to the Osborn.

Q. 8. It has been stated by Wm. P. Bryan that you, or some one on your behalf, sent said Ingraham's wife, in November, 1875, a draft of $50.00, and that said draft was payable to Ingraham's order, and that Ingraham obtained the money on it; is that statement true or false?

A. It is not true. I never sent but one draft, for $33.00, and that I directed to him, and that was sent March 6th, 1876, and I have a memorandum to that effect made at that time.

And further deponent saith not.

JOHN E. BAILEY.

CORNELIUS REWELL, a witness for claimant, being first duly sworn according to law, deposeth and saith:

Q. 1. (By proctor for claimant.) State your name, age, occupation, and residence.

A. My name is Cornelius Rewell; aged 63 years; occupation, master of a vessel; but I am ashore this season. I reside at 68 Kinsman street, in Cleveland, Ohio.

445 Q. 2. If a vessel can sail within five points of the wind, when is she "by the wind" or "close hauled," and when has she the wind "free"?

A. She is "by the wind" or "close hauled" when she is within five points of the wind, and if she is any more points from the wind she has got the wind free, or the wind is free for her.

Q. 3. Did you know the schooner American Union and the schooner S. S. Osborn in the season of 1872?

A. I knew them, but I can't exactly say the date; I knew both of them from the time they were built.

Q. 4. Suppose both of those schooners were equal in their sailing qualities or speed, and were properly hand'ed by competent masters, and one was loaded with about a thousand tons of iron ore, which was about her full carrying capacity, and the other was light, and both were carrying all of their lower canvass, and most if not all of their upper canvas, and that they were both "by the wind" in a seven or eight knot breeze, which would go the faster, the light or the loaded vessel, and, if any faster, how much?

A. I believe that the light vessel would go about a mile an hour faster than the loaded one.

Q. 5. Suppose one of those vessels were loaded as stated in the last question, and carrying the canvas mentioned, and were "by the wind" in the same breeze, and the other being light had that wind four points free, and were carrying same canvas stated in last question, how much more, if any, difference would there be between the speed of those vessels than if both were sailing "by the wind"?

446 A. I believe there would be a mile and a half difference.

Q. 6. Suppose that a vessel bound from Poverty Passage to

Straits of Mackinaw or Erie were "by the wind," sailing east by north, with the wind north by east, that when back of the North Fox she were found to have made leeway, and were then hauled up east by north half north, and when about three or four miles to the westward of Beaver Island light she were headed northeast, what kind of seamanship would that display on the part of the officer in charge of the schooner's deck when that last change was made in her course?

A. I shouldn't call it good seamanship.

Q. 7. Why?

A. Because the schooner wouldn't clear Beaver Island sailing on that course.

Q. 8. With the wind north by east could she sail northeast?

A. No, sir.

Q. 9. If the wind were northwest by north, and a schooner were four or five miles to the westward of Beaver Island light, in a seven or eight knot breeze, what kind of seamanship would it be to head her northeast, and keep her on that course say fifteen minutes or more, supposing her to be *f*ound for Erie, the course to which is east three-quarters north?

A. If he kept her on that course she wouldn't clear the island, and, being all clear of the North Fox, there was no necessity of heading higher than east three-quarters north, which was his course,
447 and would give him the wind free, and just where he wanted it, on his quarter, which is much better than dead aft.

And further deponent saith not.

C. REWELL.

Mrs. LYDIA WILCOX, being duly sworn according to law, deposeth and saith:

Q. 1st. Were you examined in this case on or about March 11th, 1878; and, if yea, how?

A. I was examined, and my testimony taken by short-hand.

Q. 2. Did you sign your deposition after it was written out?

A. I did not.

Q. 3. Have you read it over since, and did you find it correct or otherwise?

A. I have read it over, and found it incorrect.

Q. 4. In what respects?

A. In answer to the first question I am made to say by the examiner that, "I heard captain say, 'What's up,' and Wesley replied that the vessel came into us on the right side." What I stated in answer to that question was, "I heard the captain say, 'What's up,' and Wesley replied that a vessel had run into us without any lights out." Also in answer to the 3rd question the examiner makes me say, "Yes, sir; I heard Charles Ingraham tell Captain Parsons that our lights
448 were not rung is what deceived them." What I said was: "Yes, sir; I heard Charles Ingraham tell Capt. Parsons that our lights were out wrong, and that is what deceived them."

Also in answer to the 14th question the examiner makes me say, "That Captain Seamans said he had been closed. Parsons said, 'Why I have not closed.' 'No, sir,' said Captain Seamans, 'I hauled the wind close.'" What I said was, "That Captain Seamans said he had the wind close. Parsons said, 'I had the wind close.' 'No, sir,' said Capt. Seamans, 'I had the wind close.'"

Also in answer to the 16th question, after the words "flat," he has omitted "aft," which I stated in both cases.

Also in question No 18 the reporter uses the expression "flat out," when he should have written it "flat aft."

Also in question 20 the reporter uses the expression "flat out," when he should have said "flat aft."

Also in answer to question 23 he makes me say I was the last one that got off our boat. I said I was the last of the ladies who got off our boat.

Also the words "the cabin" should be added to question No. 26.

Also in answer to question 27 he makes me say, "I went out to see if the women was aboard safe." What I said was, "I went in the cabin to see if the women were safe."

449 Also in answer to question 32 he makes me say: "Wanted to make out what the propeller had." I said, "Wanted to make out what propeller it was." And at the end of the answer he makes me say, "Looking across at the Osborn." What I said was, "Looking across the Osborn's quarter."

Also in answer to question 39 he makes me say "little" in three instances where I said "light."

And further witness deposeth not.

LYDIA WILCOX.

UNITED STATES OF AMERICA,
Cleveland, Ohio, N. D. O.:

I, A. J. Ricks, circuit court commissioner within and for the northern district of Ohio, do hereby certify that on the 12th day of September, A. D. 1878, at the office of the clerk of the circuit court of the United States, at Cleveland, Ohio, in said district, present proctor for claimant, personally appeared John E. Bailey, Cornelius Rewell, and Lydia Wilcox, witnesses to testify on behalf of the claimant in a certain cause now pending by appeal in the circuit court of the United States for the northern district of Ohio, wherein W. G. Winslow et al. are libellants, and the schooner Osborn and Bliss O. Wilcox are claimant.

And I d' further certify that the aforesaid witnesses were first duly sworn to testify the truth, the whole truth, and nothing but the truth, and that their testimony was reduced by me to writing, and the same subscribed by them in my presence.

450 In testimony whereof I have hereunto affixed my official signature on this 12th day of September, A. D. 1878.

A. J. RICKS,
Circuit Court Com'r, N. D. O.

Order.

And afterwards, at the April term, A. D. 1878, of said court, to wit, on the 19th day of September, the following order was entered:

W. G. WINSLOW ET AL. *vs.* SCH'R S. S. OSBORN, BLISS O. WILCOX, CLAIMANT.	No. 3600. Appeal in admiralty.

In this case, on motion, the appellants have leave to withdraw their motion to strike off the motion of the appellees to dismiss the appeal, which is accordingly done.

Thereupon this case came on for hearing before honorable John Baxter, circuit judge, on the motion of the appellees to dismiss the appeal,

which motion, having been considered by the court, is overruled; to which ruling the appellees except, and hereby tender their bill of exceptions, and ask that the same be signed and sealed by the court, and made a part of the record, which is accordingly done.

451 *Bill of exceptions.*

Circuit court of the United States, northern district of Ohio, ss.

WM. G. WINSLOW AND H. J. WINSLOW
vs.
THE SCH'R S. S. OSBORN, BLISS O. WILCOX, claimant and cross-libellant. } Appeal in admiralty.

Be it remembered that on this 19th day of September, A. D. 1878, being a day in the April term of the court, this cause came on to be heard on the motion of the libellants to dismiss the appeal of Bliss O. Wilcox, claimant and owner of said schooner, respondent.

And to support said motion the libellants introduced said motion itself; which motion is hereto attached, marked "A," and made a part of this bill of exceptions.

The libellants also introduced the affidavit of C. H. Bill, which affidavit is hereto attached, marked "B," and made a part of this bill of exceptions.

And said claimant, in opposition to said motion, introduced the affidavits of C. M. Vorce, W. H. Condon, and L. Prentiss, which affidavits were filed on the motion to vacate order of dismissal and reinstate appeal, made March 15th, A. D. 1878, and are hereto attached, marked "C," "D," and "E," respectively, and made a part of this bill of exceptions.

Also the record in this case and the motion made at the January term, 1878, of this court by the appellant to vacate the order
452 dismissing the appeal, and to reinstate the same, and also the journal entry made at the said January term granting said motion of the appellant, a copy of which motion and journal entry are made a part hereof and marked Exhibits H and I.

It was also shown that the decree in this case in the district court was rendered on the 26th day of December, 1877, and that the next term of this circuit court thereafter commenced on Monday, January 7th, 1878, and continued to the first day of April, 1878, and that said journal entry granting said motion to vacate said order of dismissal was made and entered on the 16th day of March, 1878.

And to meet said affidavits of said claimant said libellants introduced the affidavit of H. L. Terrell, which affidavit is hereto attached, marked Exhibit F, and made a part of this bill of exceptions.

The libellants also introduced the preliminary objection to the taking of the depositions referred to in said affidavits introduced by claimant, tending to show that libellants objected to the taking and using of said depositions for the reason that the pretended appeal, so called, in this case does not set out what testimony the claimant intends to take, or upon what points, as required by rule 23 of the district court. No other affidavits or matters were introduced on said hearing, and thereupon the court found the rule of the district court for said district set forth in said motion is therein correctly set forth, and that said
453 rule is the only rule of said district court regulating appeals in admiralty from said district court to the circuit court in said dis-

trict, and that said rule was in force long prior to and at the time of said appeal.

The court also found that the appellant duly claimed an appeal in open court in said district court, and that the same was allowed; and that said claim and allowance were embraced in the decree in the district court; and that the bond in that appeal was duly made and filed in said district court within the time named in said decree, but the court found that no written appeal, so called in said rule 23rd, or writing of that nature, had been filed in said district court in this cause by the claimant or appellant, or by any person in his behalf; and that the time prescribed for filing such appeal in writing, so called in said rule 23, in the district court, as well as the time prescribed in the final decree of the district court herein, had elapsed.

The court found that such a writing had been filed in this court on February 27th, 1878, entitled in this court, a copy of which is hereto attached, marked Exhibit J, and made a part of this bill of exceptions; and that the clerk of the district and circuit courts were, on February 27th, 1878, and prior thereto, one and the same person, and the court further found that at the January term, , upon proofs furnished and arguments made, he had vacated an order then made for the dismissal of said cause, which order of dismissal was for non-
454 compliance with said rule 23 of the district court.

But the court further found that this irregularity in claimant's appeal had been waived by the libellants by reason of the matters and things set out in said affidavits.

And thereupon the court overruled said motion of libellants to dismiss said appeal, to which holding of the court that libellants had waived the irregularity of said appeal, and to which action of the court in overruling said motion to dismiss said appeal, the libellants excepted at the time in open court, and then and there tendered this their bill of exceptions, which they asked might be signed and sealed by the court and made part of the record of this cause, which is done accordingly.

JNO. BAXTER, [SEAL.]
Judge, &c.

Filed September 19th, 1878.

455 *Exhibit A, referred to in bill of exceptions.*

United States court, northern district of Ohio. In admiralty.

W. G. & H. J. WINSLOW
vs.
SCHOONER S. S. OSBORNE. } Motion to dismiss appeal.

And now come the said libellants, by R. P. Ranney and H. L. Terrell, their proctors herein, and move the court to dismiss the appeal of Bliss O. Wilcox, claimant herein, and for cause say:

That appeals in admiralty from the district to the circuit court of the United States in said district are governed and provided for by the 23rd rule of said district court in admiralty, which rule reads as follows:

"Appeals in admiralty to the circuit court shall be taken within ten days from the date of the decrees, unless further time be given by special order of the judge. The appeal shall be in writing, and shall specify particularly from what part of the decree, if less than the whole, the appeal is taken; also, whether it is intended to make new allegations or proofs, and, if so, what; and whether it is intended to pray for

any other relief, and, if so, what; and on the trial above the appellant shall be strictly confined to the specifications in his appeal. Either or both parties may appeal in this manner, and no answer shall be required from the appellee, but for any irregularity he may except or move to dismiss.

456 "The appeal shall be filed with the clerk of the district court, and from that time, security having been given, it shall be considered as perfected; and it shall be the duty of said clerk, within twenty days, unless a longer time shall be allowed by the district judge, to prepare and deliver to the clerk of the circuit court, together with said appeal, the records in such case required by the 53rd rule of the Supreme Court, and when this is done so much of the case as is appealed shall be in the exclusive control of the circuit court. With a view to provide for the certifying of testimony in case of appeal the court shall, unless otherwise agreed by the parties, cause all oral testimony to be reduced to writing as the trial progresses, either by the judge, the clerk, or a commissioner designated for that purpose, the cost of which shall be taxed in the bill of costs, and such testimony shall stand upon the same footing as depositions, and be certified up accordingly.

"Upon written application to the court from which the appeal is to be taken, proceedings in execution may be suspended until the time of perfecting the appeal shall have elapsed.

"The amount of security to be given by the appellants shall be fixed by the court from which the appeal is taken, and its sufficiency shall be approved by the court if given in term time, otherwise by the clerk."

"That by order of the district judge the time of claimantfor perfecting his appeal herein was extended to twenty days from the
457 date of the final decree of said district court herein, to wit, December 26th, 1877, and expired on the 15th day of January, 1878, at which time no appeal in writing had been filed by said claimant, or any person in his behalf, in said district court, as required by said rule, and in fact no appeal in writing or otherwise was ever filed herein in said district court, nor was any appeal in writing ever filed in this cause until the transcript was filed and the case was docketed in this court, to wit, on the 27th day of February, 1878, one month and twelve days after the expiration of the time allowed for filing the same, and said appeal was then filed in this court instead of said district, as required by law.

Wherefore libellants pray that the appeal herein be dismissed,

R. P. RANNEY,
WILLEY AND TERRELL,
Proctors for Libellants.

Exhibit B, referred to in the bill of exceptions.

United States circuit court, northern district of Ohio. In admiralty.

W. G. & H. J. WINSLOW *vs.* SCHOONER S. S. OSBORNE. } Affidavit on motion to dismiss appeal.

458 NORTHERN DISTRICT OF OHIO, *ss:*

Charles H. Bill, being duly sworn, says:

That he is, and for several years last past has been, deputy clerk of the district court of the United States for the northern district of Ohio.

That in the above-entitled cause, when in the district court, no appeal in writing was filed within twenty days from the date of the final decree therein in said district court, viz, December 26th, 1877, nor has any appeal in writing ever, up to this date, been filed in said district court, by Bliss O. Wilcox, claimant and appellant, or by any other person whomsoever.

That on the 27th day of February, 1878, and not before, as appears by the files of this case in this court, an appeal in writing was filed in this court in this case, which is the only appeal in writing, or paper purporting to be such, ever filed in this cause, in either the district or circuit court for this district, by Bliss O. Wilcox, appellant, or by any other person whomsoever.

CHAS. H. BILL.

Sworn to and subscribed before me this 11th day of June, A. D. 1878.

GEO. WYMAN,
Com'r Circuit Court, N. D. O.

459 *Exhibit C, referred to in the bill of exceptions.*

In the circuit court of the United States for the northern district of Ohio.

W. G. AND H. J. WINSLOW, LIBELLANTS, *vs.* SCH'R S. S. OSBORNE, &C. } Appeal in admiralty. Affidavit.

Charles M. Vorce, being duly sworn, on his oath says that he is a member of the firm of Prentiss and Vorce, proctors for appellant in this cause.

That on Monday March 11th, 1878, at about 10 o'clock a. m., H. L. Terrell, esq., proctor for libellants, came into the office of Prentiss and Vorce, No. 5 Rouse Block, Cleveland, when this affiant and Loren Prentiss and Wm. H. Condon were then present. That said Prentiss then asked said Terrell whether he would prefer to have the new evidence to be offered by the appellant on the trial of this cause, taken in open court on the trial, or before a commissioner and reduced to writing, and whether said Terrell would attend on the afternoon of the same day before Earl Bill, as commissioner, and take such new evidence without other or further notice, to which said Terrell answered that
460 it would be preferable to have the testimony taken before trial and reduced to writing, and that he would attend to the taking it that same day, in the afternoon, at 2 o'clock p. m.

And further he saith not.

CHARLES M. VORCE.

Subscribed in my presence, and sworn to before me, by the said Charles M. Vorce, this 15th day of March, A. D. 1878.

GEO. WYMAN,
Com'r Circuit Court, N. D. O.

Exhibit D, referred to in the bill of exceptions.

Circuit court of the U. S., northern district of Ohio, ss.

WM. G. WINSLOW ET AL. *vs.* SCHOONER S. S. OSBORNE. } Appeal in admiralty.

Wm. H. Condon, being first duly sworn, on oath states that about

ten (10) a. m. on Monday, March 11th, 1878, at the office of Messrs. Prentiss and Vorce, he heard Mr. Prentiss say to H. L. Terrell, esq., that he, Prentiss, wanted to take some testimony on behalf of the Osborne, and ask said Terrell if he would consent to have the wit-
461 ness examined on the stand during the trial, or would he attend to their examination at two o'clock that day, before the clerk of said court, or before a U. S. commissioner, and Mr. Terrell said he would attend at two o'clock to taking of the testimony, without formal notice.

Affiant further says that said Terrell, during the afternoon of said day, did attend the examination of five witnesses who testified on behalf of the appellants, and then introduced Clifton B. Beach and examined him as a witness on behalf of the appellees herein, and then said Terrell was sworn and examined as a witness on behalf of the appellees.

Affiant further says that he was present when said Terrell stated to the court, on Tuesday, March 12th, 1878, on the hearing of the motion to dismiss the appeal, that he had agreed to take testimony at 2 o'clock on the day before, and that it was not until after he had so agreed that he filed the motion to dismiss the appeal, a few minutes before eleven on Monday, March 11th, 1878.

Affiant further states that no evidence was introduced or admissions made on the hearing of said motion in support of the same.

WM. H. CONDON.

Subscribed and sworn to before me this day of March, 1878.

GEO. WYMAN,
Com'r Circuit Court N. D. O.

462 *Exhibit E, referred to in the bill of exceptions.*

The circuit court of the United States for the northern district of Ohio.

WM. G. WINSLOW, H. J. WINSLOW,
vs.
SCH'R S. S. OSBORN. } Appeal in admiralty.

And now comes Lorin Prentiss and makes oath and says that he is one of the proctors for the appellant, and that immediately upon the giving of the bond for the appeal of this case to this court he informed H. L. Terrell, esq., one of the proctors for the libellant, that said bond had been so given, and that the appellant would be ready for trial at this term of this court, and requested said Terrell to consent to the sending up of the depositions and written evidence instead of copying the same, and thereby save the appellant the large expense of paying for making such copy; that said Terrell refused so to do, and the clerk of the court thereupon commenced immediately to make up the record, covering some four hundred pages, and costing about $125.00. That the same was completed and filed February 26th, at which time said Terrell was present and knew that the same was completed and
463 filed, and desired the same for examination preparatory to the trial of this case in this court. That it was then agreed between the said Terrell and affiant, as proctors, that the case should be tried at this term, while the circuit judge should be here.

That affiant, about that time, as well as previous thereto, informed said Terrell that the appellant would introduce new proofs in this case.

That the appellant increased the expenses of procuring the attendance

of Wm. H. Condon, esq., of Chicago, to aid in the trial of the case; and that said Terrell well knew that said appellant was incurring all the expense and trouble necessary to get ready for trial.

That on March 4th, when the case was called by the circuit court for trial, the case was marked for trial; and that it was agreed between affiant and said Terrell that the case should be taken up and tried on Monday or Tuesday, March 11th or 12th, unless reached and required by the court to be tried earlier. That the appellant accordingly procured the attendance of the witnesses in his behalf, and also of said Condon, on Monday, March 11th, and was then ready for trial, and had incurred much expense and trouble *in* so getting ready.

That on Monday, March 11th, about 10 a. m., this affiant saw said Terrell, and proposed to him to take the new testimony that day before a commissioner, and to which said Terrell agreed, and 2 o'clock p. m. was fixed upon as the time for taking of the same. That the same was taken in pursuance of such agreement, and duly filed in court on
464 Tuesday morning following, the evidence so taken being on the part of the appellant, and some also on the part of the libellant. That no claim has ever been made on the part of the proctors for the libellant, so far as this affiant knows, that they have in any respect been misled or prejudiced.

That no evidence was introduced or admissions made in support of said motion of dismissal; and that said Terrell admitted in open court on the hearing of said motion of dismissal, the facts above set forth as to the allowance of the appeal, the giving of the bond for appeal, the making up of the record, including the copying of the testimony, and the filing of the record in this court, the preparation by both parties for the trial of this cause at this term of this court on the days named, the agreement on his part to take testimony in the same, and the taking of such testimony as above set forth.

L. PRENTISS.

Subscribed and sworn to before me, by the said Lorin Prentiss, this 15th day of March, 1878.

GEO. WYMAN,
Com'r Circuit Court N. D. O.

465 *Exhibit F, referred to in the bill of exceptions.*

U. S. circuit court, northern district of Ohio.

W. G. AND H. J. WINSLOW *vs.* SCHOONER S. S. OSBORNE. } Appeal in admiralty. Affidavit.

NORTHERN DISTRICT OF OHIO, *ss:*

H. L. TERRELL, being duly sworn, says:

1. That as to the statement contained in the affidavit of Lorin Prentiss herein, the following are the facts: That casually, in conversation with said Prentiss, affiant expressed not only a willingness but also a desire to try said case at the former term while the circuit judge was here, and said that he would be ready, and this was before said circuit judge arrived in Cleveland and opened court; that affiant also consented at about the same time that said Prentiss might have said cause set for a particular day, subject to the order of court, in order to

accommodate foreign counsel; but that this affiant, in terms or by implication, agreed to waive any rights or consent to any defects in the appeal, or did anything more than in a casual conversation, outside of court, express a desire on his part to try said cause before the circuit court when it next sat, and a willingness to accom'idate counsel
466 from abroad as to a day of trial, is wholly and unqualifiedly false. The defect in the appeal was at that time unknown to and unthought of by either party, and an intention to waive such defect was, of course, impossible, and the attempt to exalt ordinary conversation between counsel about a case into a solemn compact, whereby rights were acquired or lost, is not in accordance with the facts.

2. As to the agreeing to take depositions on the morning case was set for trial, it hath this extent and no more: affiant was called upon by proctors for respondent to waive twenty-four hours' notice for the taking of depositions, and in reply to such request agreed to accept verbal notice and waive the twenty-four hours. Affiant did not agree to take depositions, since he had none at that time to take, and did not agree to respondent's taking, since he objected thereto, as the depositions show, and that affiant agreed to do anything except waive the 24 hours' notice for the accom'idation of opposite counsel, is unqualifiedly false.

3. As to appearing at taking of depositions, &c., it was after motion to dismiss was filed and after the court had been requested to dispose of said motion before further proceedings in the case, and it was a suggestion of the court that the testimony might be taken, and then dispose of motion and case if necessary.

H. L. TERRELL.

467 Sworn to and subscribed before me this 12th day of September, A. D. 1878.

E. W. PAGE,
U. S. Com'r, N. D. O.

Exhibit H, referred to in bill of exceptions.

In the circuit court of the United States for the northern district of Ohio.

WM. G. WINSLOW AND H. J. WINSLOW, libellants, *vs.* SCHOONER S. S. OSBORN, BLISS O. WILCOX, claimant.	Appeal in admiralty. Motion to vacate order of dismissal.

Now comes the said Bliss O. Wilcox, appellant, by Prentiss and Varce, his proctors, and moves the court here to vacate and set aside the order and judgment dismissing the appeal in this cause, and to reinstate this cause upon the docket for trial in this court, and for cause for granting this motion the said appellant avers and shows to the court as follows, to wit:

I. That from the time of the giving of the appeal-bond in this cause, on the 12th day of January, 1878, the libellants and their proctors have well known that the said bond was so given, and that the transcript of the record was being prepared herein to be filed in this court, in
468 pursuance of the appeal of this cause to this court, and that the said record was duly filed in this court on the 26th day of February, A. D. 1878.

That they have also well known during the time above named that the appellant intended to make new and additional proofs in this cause in this court on such appeal.

That during all the time above named it has been understood and agreed between the proctors for the libellants and the proctors for the appellant that the cause should be tried in this court at the present term thereof, and in pursuance of such understanding it was agreed between the proctors for libellants and proctors for appellant, on Monday, March 4th, when this case was called for trial, that the same should be tried on Monday, March 11th, or the following day.

That in pursuance of such understanding and agreement the proctors for the libellants agreed with the proctors for the appellant, about 10 o'clock a. m. of Monday, March 11th, to attend to the taking of new testimony in this case at 2 o'clock p. m. of that day, and did accordingly attend to the taking of the same on behalf of the appellant, and also introduced new evidence in behalf of said libellants before the commissioner before whom said testimony was taken.

That neither said libellants or their proctors have been in any respect misled or prejudiced.

That in accordance with said understanding the appellant has
469 gone to great expense in preparing for the trial of this cause, and was then ready for trial.

II. That this cause was duly appealed to this court and bond duly given therein on the 12th day of January, 1878, and the record therein duly filed in this court on the 26th day of February, 1878, and that no evidence was introduced or admissions made in support of the motion filed by the libellants for the dismissal of the appeal in this case, and that the allegations of the same that no appeal was filed or perfected in said district court are untrue.

III. That the court erred in the granting of said motion to dismiss, and in dismissing the appeal in this case.

PRENTISS & VARCE,
Proctors for Appellants.

Exhibit I, referred to in bill of exceptions.

WM. G. WINSLOW ET AL.
vs.
SCHOONER S. S. OSBORN ET AL.
} Appeal in admiralty.

This cause came on to be heard upon the motion of Bliss O. Wilcox, claimant of said schooner S. S. Osborn, and appellant, to set aside and vacate the order of this court dismissing his said appeal made and entered on the 12th instant, and the affidavits in support of said motion, and was argued by the proctors of the respective parties.

470 On consideration whereof the court, the honorable circuit judge presiding, doth find that notwithstanding said appeal was not perfected in accordance with the rule of said district court, yet the court being of the opinion that the irregularity in said appeal had been waived by the appellee, doth order that said order of dismissal be set aside and vacated, and that this cause be reinstated on the docket of this court.

And thereupon came said appellees, by Mr. Terrill, their proctor, and except to the said ruling and order of the court; and it is further ordered that both parties be allowed to take new testimony to be used on the trial of this cause, and this cause is continued to the next term of this court.

JNO. BAXTER.

Exhibit J, referred to in bill of exceptions.

In the circuit court of the United States within and for the northern district of Ohio. In admiralty.

BLISS O. WILCOX, APPELLANT,
vs.
WM. G. WINSLOW AND H. J. WINSLOW, APPELLEES. } Appeal.

The said Bliss O. Wilcox represents to the court here that,
471 on the 26th day of December, A. D. 1876, in a cause in admiralty then pending in the district court of the United States for said district, wherein the said Wm. G. Winslow and Hezekiah J. Winslow were libellants, and the schooner S. S. Osborne, her tackle, &c., and the appellant as claimant thereof, were respondents, and appellant as such claimant was cross-libellant, and the schooner American Union, her tackle, &c., and said appellees, as claimants thereof, were respondents to said cross-libel.

Said district court rendered a decree in favor of said appellees as such libellants and against the appellant as such claimant and J. Emery Bailey and Thomas Cartright as bail for $4,030.00 damages and $517.48 costs, and dismissing said cross-libel as by the transcript of the record of said cause and decree filed in this cause doth appear.

And said Bliss O. Wilcox hereby appeals from said decree and prays that upon the hearing of said appeal upon the testimony offered in said district court and upon new proofs to be offered by appellant as follows:

As to the course and locality of the vessels American Union and S. S. Osborn, at and before the collision in the libel complained of and thereafter.

As to the direction of the wind at and before the time of said collision at and near the locality thereof.

As to the sail carried by each of said vessels and as to the
472 manner of said collision and the injuries caused thereby.

As the visability of the American Union's lights before and at the collision, and as to the improper placing and carrying of said lights by said vessell.

As to the sufficiency and competency of the lookout on said American Union before and at the collision.

As to the credibility of libellant's witnesses and to contradict the testimony of the same.

To impeach Robert F. Parsons, a witness produced and used by the libellants.

That said decree may be vacated and reversed, and that appellant may recover of said appelle's his damages and costs, as in his cross-libel in said cause in said district court he prayed.

PRENTISS AND VARCE,
Proctors for Appellants,
BLISS O. WILCOX, *Appellant,*
By PRENTISS AND VARCE,

Filed Sept. 19th, 1878.

And afterwards at the April term, A. D. 1878, of said court, to wit, on Tuesday, September 24th, the following decree was entered:

473 *Decree and reference.*

WM. G. WINSLOW ET AL.
vs.
SCH'R S. S. OSBORN, BLISS O. WILCOX, CLAIMANT and cross-libellant. } Appeal in admiralty.

This day came the parties, by their proctors, and the court, having duly considered the testimony and arguments of counsel thereupon, and being now fully advised in the premises, doth find and pronounce that the collision in said libel, and in said answer and cross-libel mentioned, was caused by the mutual fa'lt of the persons who had the charge and management of the schooners American Union and S. S. Osborn, respectively, and doth order, adjudge, and decree that the damages arising and accruing to the said vessels, together with the costs of this suit, be paid or accounted for by each of said vessels, or the owners thereof, in equal proportion.

And the cause is hereby reported to A. J. Ricks, esq., clerk of this court, as a special commissioner to ascertain from the testimony now on file in the cause, and from such other testimony as may be adduced by the parties before him, and so report to the court as soon as conveniently may be, the amount of damages caused to each of the vessels aforesaid by reason of said collision, and to make division thereof according to the provisions and terms of this decree.

474 *Order of continuance.*

And afterwards, at the October term, A. D. 1878, to wit, on January 3rd, 1879, an order was entered in this cause of continuance to the next term of said court.

475 *Master's report.*

In the circuit court of the United States, northern district of Ohio, eastern division.

WILLIAM G. WINSLOW ET AL.
vs.
SCH'R S. S. OSBORN ET AL. } Appeal in admiralty. Master commissioner's report.

The master, to whom it was referred "to ascertain from the testimony now on file in the cause, and from such other testimony as may be adduced by the parties before him, and so report to the court as soon as conveniently may be the amount of the damages caused by each of the vessels aforesaid by reason of the collision, and to make division thereof between each of said vessels, or the owners thereof, in equal proportions," begs leave to submit the following as his report:

Testimony of witnesses has been taken by the master, in the taking of which he has been attended by the proctors of the respective parties, which testimony is filed in court with this report. The claims of the parties hereto have been fully presented by their counsels, and, after due consideration, the master reports his findings as follows:

First. As to the damage sustained by the libellants by reason of said collision—

The master finds that said damages have been correctly reported by the master in the district court, which report is in evidence before him on this hearing.

476 In said report the repairs to the American Union, made necessary by the collision, were by agreement of parties fixed at the sum of fifteen hundred dollars. The amount due the libellants as demurrage for the detention of said vessel during the twenty-two days she was undergoing repairs, was by agreement fixed at the sum of sixteen hundred dollars. The claimant alleges that said sums were agreed upon, not because they were conceded to be correct, but simply to afford the basis for a decree in the district court; but as no satisfactory testimony has been offered upon which the master can base a finding which, in his judgment, would approximate any nearer to the actual damages sustained, he fixes, and so reports, the damages sustained by the said American Union by reason of said collision to be the sum of three thousand one hundred dollars ($3,100).

Damages due the libellant, $3,100.00.

Second. As to the damages sustained by the claimant—

The master finds from the testimony of Bliss O. Wilcox, the owner and claimant of the Osborne, and from the several exhibits produced and proved by him, that he expended for repairs to the schooner S. S. Osborne, made necessary by said collision, the sum of seven thousand two hundred and eighteen dollars and fourteen cents ($7,218.14). The master has included in said sum an allowance to the owner of said vessel for thirty-six days' labor and suspension of said repairs at five dollars per day, and had deducted from the towage bills claimed by
477 said owner the sum of $175, which sum he would have expended for towage in making his usual trips, and which cannot be claimed as an expenditure made necessary because of said collision. The aggregate sum fixed as above stated represents the actual repairs made necessary by said collision.

The master has carefully considered the authorities cited by the claimant in support of his claim, that the measure of damages sustained by the schooner Osborne is the value of the use of that vessel in open market during the period of forty-five days she was detained for repairs made necessary by reason of the said collision.

Both said vessels, it is admitted, were under charter for the season of 1872 to carry iron-ore for the Cleveland Iron Mining Co. from Escanaba, Michigan, to Cleveland, Ohio, or Erie, Pa., at the rate of two dollars per gross ton when delivered at Cleveland and two and $\frac{20}{100}$ dollars per gross ton when delivered at Erie. Under said contract the Osborne had made six trips, five of which had been made from Escanaba to Erie, and at the time of the collision she was making her seventh trip and was bound for Erie.

The contract for the season as referred to was made in November, 1871, and based upon the rates prevailing during that season, after the opening of navigation in 1872; the going rates of freight advanced rapidly, and all kinds of vessels were in active demand.

The testimony shows that at one period of the season the rates of freight were as much as five dollars per ton to vessels of the same class as the Osborne. It is insisted by the claimant that the value of the use of the vessel on the basis of such going rates of freight
478 is the true measure of damages to be allowed for the period she was detained for repairs, and various decisions have been referred to as establishing the principles upon which this claim is based.

But the master has been unable to find authority for any such allowance in the cases cited.

All that the claimant can equitably ask is that he be restored to the condition he was in as owner of the vessel at the time of the injury. A

full allowance for all necessary repairs and demurrage for the full period of the detention by reason of the collision, on the basis of the contract made for the season, is a full indemnity for the loss sustained, an allowance for demurrage, which will represent the full earnings the claimant could have made under the charter had the collision not occurred, is all that the master can find authority for reporting.

Upon this basis, as to the measure of damages, the master finds that the said claimant's net earnings per day, under said contract, amounted to the sum of $68.50, viz:

Freight on 1,100 tons of ore from Escanaba to Erie, @ $2,20 per ton	$2,420 00
Expenses of trip to be deducted	1,256 00
Net earning each trip	$1,164 00

Average length of trip from Escanaba to Erie, 17 days; making value of use of vessel per day $68.50.

Total demurrage, 45 days	$3,082 50

479 The total damages sustained by the Osborn, by reason of said collision, the master finds as follows:

Repairs made on Osborne	$7,218 14
Demurrage during detention	3,082 50
Total damages sustained by Osborne	$10,300 64

Should the court be of the opinion that the claimant is entitled to the value of the use of the vessel at the going rates of freight during the period of the Osborne's said detention, the master finds, by request of claimant's proctors, the damages on said basis as follows:

Freight on 1,100 tons ore from Escanaba to Erie, @ $4 per ton	$4,520 00
Expenses of trip, to be deducted	1,256 00
Net earnings each trip	$3,264 00

Average length of trip from Escanaba to Erie, 17 days; making value of use of vessel per day $192.

Total demurrage 45 days, @ $192 per day	$8,640 00

The total damages sustained by the Osborne by reason of said detention the master finds as follows:

Repairs made on the Osborne	$7,218 14
Demurrage during detention, as above	8,640 00
Total damages sustained by Osborn, on basis of going rates of freight during detention	$15,858 14

If the demurrage allowed the Osborne should be upon the basis of the going rates of freight during the time of her detention, the allowance upon the same principle should be made the American Union, to wit:

Freight on 900 tons from Escanaba to Erie, @ $4 per ton	$3,600 00
Gross expenses of trip	1,100 00

480 Net earnings each trip $2,500 60

Average length of trip from Escanaba to Erie, 17 days; making value of use of vessel per day equal $147.

Total demurrage for 22 days detention	$3,234 00
Repairs to Union	$1,500 00
Demurrage	3,234 00
Total damages to libellant on basis of going rates of freight during detention	$4,734 00
Total damages to Osborn on the basis of demurrage at going rates of freight	$15,858 14
Total damages to Union on same basis	4,734 00
	$20,592 14
Liability of the libellants on division of damages	$10,296 07
Deduct amount of libellant's own damages	4,734 00
Sum due to claimants on division as above	$5,562 07
Interest at 6 % from Oct. 1st, 1872, to Jan. 7th, 1879	2,094 09
Total damages due claimant	$7,656 16

Upon the law, as the master believes it to be, and upon the basis of estimating the damages as hereinbefore set forth, he finds and reports the amount due the claimant to be as follows:

Total amount of damages due to the claimant	$10,300 64
" " " " " " " libellant	3,100 00
" " " " to both vessels	$13,400 64
Liability of libellant on a division of damages	6,700 32
Deduct amount of libellants own damages	3,100 00
Sum due claimant on division as above	$3,600 32
Int. @ 6 % from Oct. 1st, 1872, to Jan. 9th, 1879	1,365 40
Total sum due to claimant	$4,965 72

The master therefore reports that the respondent and claimant Bliss O. Wilcox, is entitled to recover from the libellants as his damages sustained by reason of said collision, the said sum of four thousand nine hundred sixty-five dollars and seventy-two cents ($4,965.72) with interest from the first day of the present term of this court.

Respectfully submitted,

A. J. RICKS,
Special Master Commissioner.

Filed March 4th, 1879.

482 *Exceptions of claimant and appellants to report of A. J. Ricks, special master.*

In the circuit court of the United States for the northern district of Ohio. In admiralty.

WM. G. WINSLOW ET AL. LIBELLANTS, *vs.* SCH'R OSBORNE, &C., APPELLANT. } Exceptions of claimant and appellant to report of A. J. Ricks, special master.

Now comes Bliss O. Wilcox, claimant of the schooner Osborne, ap-

pellant, and excepts to the report of A. J. Ricks, special master in this cause for the following reasons, and in the following respects, to wit:

1. That said master erred in finding and reporting that the libellants are entitled, as damages for the delay of the schooner American Union, to the sum of $1,600.00 upon the basis of her net earnings under her charter made in the fall of the year 1871, when the sum allowed upon such basis should be the sum of $1,138.72 only.

2. That said master erred in finding and reporting that said claimant is entitled as damages for the delay of the schooner Osborne to the sum of $3,082.50 only, instead of the sum of $8,640.00.

3. That said master erred in finding and reporting that said claimant is not entitled to recover the value of the use of the schooner Osborne during the time she was delayed in making repairs at the current
483 market rates of freight, less ordinary expenses.

4. That said master erred in admitting in evidence the charters made by the owners of the respective vessels in the fall of 1871, to govern and control in fixing the amount of the damages for the delay of the respective vessels while making repairs, and in finding and reporting that said charters do in law control in fixing the damages for such delay.

5. That said master erred in finding and reporting in legal effect that said claimant and appellant was only entitled to recover the net value of such charter, instead of the full net value of the use of said schooner Osborne during said delay.

6. That said master erred in finding and reporting that the total damages due to the libellants' amounts to the sum of $3,100.00.

7. That said master erred in finding and reporting that the total damages due to the appellant as claimant of the schooner S. S. Osborn, amounted to the sum of $1,030.64 only.

8. That said master erred in finding and reporting that the appellant as claimant of the schooner Osborne is entitled to recover from the libellants upon division of damages the sum of $4,965.72 only, instead of the sum of $7,656.16.

PRENTISS AND VORCE,
Proctors for Appellant.

Filed March 10th, 1879.

484 *Testimony before master.*

In the U. S. circuit court for the northern district of Ohio.

WM. G. WINSLOW ET AL.,
vs.
BLISS O. WILCOX, CLAIMANT AND CROSS-libellant.

Hearing in damages before A. J. Ricks, special master, September 26th and 27th, 1878.

Testimony on behalf of respondents.

Present, W. H. Condon for respondents.
" H. L. Terrell for libellant.

BLISS O. WILCOX, being first duly sworn, was examined in chief by Mr. CONDON and testified as follows:

Q. What is your name, age, residence, and occupation?

A. I am about 66; reside in Painesville, Lake County, Ohio.

Q. You were the owner of the schooner S. S. Osborn at the time of this collision?

A. Yes, sir; sole owner.

Q. Did you have the damages sustained by the Osborn in that collision repaired in part?

A. Yes, sir.

Q. Where?

A. At Cleveland.

Q. What amount, if any, did you pay out in repairing that vessel, or for materials to Quayle, Martin & Co.?

A. $290.

485 Q. Have you the bill for the same; and, if yea, attach it to your deposition as Exhibit A.

A. Here is the bill, which is marked Exhibit A.

Q. What work did Mr. Wm. H. Radcliffe do in repairing said damage?

A. The bills that I have paid set forth.

Q. Are these the two bills, (showing papers to witness)?

A. Yes, sir.

Q. Are they correct?

A. Yes, sir. The bill amounts to $3,228.65, Exhibit B; Exhibit C amounts to $29.

Q. What amount of tow-bills did you pay in Cleveland, rendered necessary by reason of this collision?

A. These amounts in Exhibit D, $10; and E, $20.

Q. What did you pay the tug Kate Williams for towing?

A. $250. Here is the bill, Exhibit F.

Q. What amount did you pay the Northern Transportation Co. for towing?

A. $150. Here is the bill, Exhibit G.

Q. What amount was paid the propeller City of Detroit for towing?

A. Towing from Mackinaw to Port Huron, $500. Here is the bill, Exhibit H.

Q. What amount did you pay A. Lacour, and what was it for?

A. Blacksmithing and repairs, $166.14. Here is the bill, Exhibit J.

Q. What amount did you pay J. Grover and Sons?

A. $103, for small boat.

Q. Rendered necessary by the collision?

A. I suppose so; yes, sir. Here is the bill, Exhibit K.

Q. What amount did you pay the Globe Iron Works on account of this collision?

A. $91.61. Here is the bill, Exhibit L.

486 Q. What amount did you pay Upson and Walton on account of this collision?

A. $201.73 and $85.88; Exhibits M and N.

Q. What amount did you pay S. B. Conklin?

A. $121.44; Exhibit O.

Q. What amount did you pay John O'Neil on account of this collision?

A. $264.94; Exhibit P.

Q. What amount did you pay R. T. Lyon and Son?

A. I have here a bill for five barrels of salt, $9.50; Exhibit Q.

Q. How much money did you expend for salt besides that?

A. I bought two loads, I know. I think one was 9 barrels and the other was 5 barrels.

Q. At the same rate?
A. Yes, sir.
Q. Have you any bills of that?
A. I have not.
Q. Was that used in repairing the damage of the collision?
A. Yes, sir.
Q. What amount did you pay Herbert, Hawley and Co. on account of this collision?
A. Mr. Radcliffe paid that bill. I gave him money, $40, to go and settle the bill, and he brought me back the balance; the bill is $27.40.
Q. What amount did you pay for refitting and fitting out the vessel, and to whom?
A. To Mr. Smith; $410.
Q. This is the bill of it?
A. Yes, sir.
Q. Was that rendered necessary by reason of the collision?
A. Yes, sir; it is Exhibit R.
487 Q. What amount on account of this collision did you pay John Bates?
A. I didn't pay that. Captain Seamans paid that.
Q. How much?
A. $5.
Q. What amount did you pay A. T. Van Tassel?
A. $7.45.
Q. Was that on account of the collision?
A. Yes, sir.
Q. Here is a paper containing four receipts of $30 apiece from Smith, O'Niel, McDonald and Lieb.
A. Those are from the time she came in, the 16th of August.
Q. Until what?
A. Until they commenced on the 31st of August—commenced refitting her.
Q. Those wages for members of the crew?
A. No; they were hired. The captain let the job to Smith.
Q. What were they doing?
A. They were working for the vessel; that is, working in the shipyards, 'oust abouts, and everything else.
Q. Here is a receipt from John Fell, $32.88. What is that for?
A. That was for the same as the others.
Q. Work rendered necessary by the collision?
A. Yes, sir. I got run a little short of money, and I told the captain to pay him as soon as he got to Milwaukee, and he took this receipt in Milwaukee.
Q. Here is a receipt signed, for $60, by Sylvester Smith.
A. That was the steward.
Q. 24 days from the time of this collision?
A. 24 days from the time she entered here I settled up. I suppose up to that time, and then he quit the 9th of September.
488 Q. Was he cooking for these men that were at work?
A. Yes, sir.
Q. And the amounts paid them were in addition to their board, and this man did the cooking?
A. Yes, sir; that man did the cooking.
Q. Did you repair all the damage to the hull rendered necessary by this collision?
A. No, sir.

Q. How much more was there left unrepaired?

A. We did not make the foreyard here, for we could not get a stick in the place to make it that was long enough and large enough, nor we didn't repair the cut-water nor the figure-head; it was gilded iron, I think.

Q. About how much would it cost to do that?

A. That is an estimate that I got Mr. Radcliffe to make (producing the paper).

Q. Is that correct, in your opinion?

A. In my opinion it cannot be far out of the way.

Q. Was the master of the vessel under pay while it was being repaired here?

A. He was.

Q. At what rate?

A. At the rate of $1,200 the season.

Q. How much a day?

A. That would be $5 a day.

Q. $210 you have figured it out here.

A. That is $5 for a day.

Q. Were his services necessary at that time?

A. I think they were; there were no lazing hands on board.

Q. Was he at work there?

A. Yes, sir; they were all kept at work.

489 Q. What were the mate's wages during the time he worked?

A. The books will show.

Q. You have it figured out here?

A. It says August 28th, $100 a month.

Q. 42 days she was detained, you have it figured here?

A. $139.96.

Q. Do you know how much the second mate was getting?

A. I only know by the books here; it was $100 a month.

Q. The 2nd mate was getting as much as the first mate?

A. It appears by the books he was.

Q. What was the steward getting?

A. That represents $100 a month.

Q. And the cook?

A. Well, that is the cook, the steward.

Q. How much was the board of the men that were kept employed there worth?

A. Six shillings a day; it is worth more, but that is what I charged.

Q. It is figured up $315?

A. Yes, sir.

Q. Were you at work there?

A. I was.

Q. What doing?

A. I was taking charge of pretty much everything.

Q. What charge did you make for your services?

A. I charged $10 a day.

Q. It amounts to how much; 36 days here, marked $360?

A. I suppose that is it.

Q. I notice under the head of disbursements, in the vessel's book, under date of August 15th, blocks, repairing blocks $72; do you

490 know whether that was work rendered necessary by the collision?

A. I could not tell you. I could not pretend to say.

Q. Did she get any blocks before this collision?

A. Not that I know of.

Q. What are these items here in this book?
A. General disbursements.
Q. On account of what?
A. Well, expenses of the vessel; what is called general, I suppose, running expenses.
Q. You don't know where those blocks were bought?
A. I do not.
Q. Do you know anything about having a force-pump?
A. I do.
Q. Where was that got?
A. That was got—it was one that was put in when she was built, and it was broken in the collision; I don't know how much it cost to repair it. We undertook to repair it by using amberline and marline and such like, but could not do anything with it, and they had to give it up, and we was in too big a hurry, too.
Q. Did you get another one?
A. I didn't get another one.
Q. What was the value of that at the time of the collision?
A. My impression is the pump and fixtures cost $75.
Q. Do you know what the condition was at the time of its collision?
A. It was always in good order.
Q. The MASTER. That was a pump attached to the vessel before the accident?
A. Yes, sir.
491 Q. Mr. TERRELL. How old was it?
A. I don't know, it may have been five years old; it was a pump used for washing decks and such like.
Q. Mr. CONDON. How long do they usually last?
A. Well, I could not tell you that; I know it was in good order.
Q. Do you know whether they last more than 5 years?
A. I know it was in good order before the collision, because I was aboard the vessel, generally speaking, every trip; when she went to this place I was aboard the vessel.
Q. Here is a bill, August 29th, $20.22, calking and fishing gaff.
A. I don't know anything about it; all I know is what is on the book here.

J. W. WALTON, being first duly sworn, was examined in chief by Mr. CONDON, and testified as follows:

Q. Look at Exhibits M and N of Mr. Wilcox's deposition, and state what you know in regard to the items mentioned therein, and the prices charged for them; who they were furnished by, and for what purpose, so far as you know.
A. Those bills were made out by our book-keeper, with the exception of the last item on this bill, which was made out by my partner. (Exhibit M.) They both came from our office; the prices are right, and the goods were furnished to the schooner Osborn at the time.
Q. While she was being repaired?
A. While she was being repaired, subsequent to the collision with the American Union.
492 Q. The prices were reasonable and proper?
A. Yes, sir; the prices were the usual prices at that time; in fact, rather under the usual prices than over.
Q. Were you acquainted at that time with the value of force-pumps and fixtures, such a one as would be used on the Osborne?
A. Yes, sir; I am.

Q. What would be the value of one?

A. The Osborn would require a large size force-pump—the only one that would be fit to put on a vessel of that size. The cost at that time of them was not less than $45. That is for the bare pump without any fixtures; they require more or less hose; I am not so much able to state what that was worth at that time from recollection simply; couplings and pipes and the pipes necessary to connect them with the water below, going down through the vessel, that is a matter that would be different in different schooners.

Q. Give the average cost of a pump and fixtures for a vessel of that size.

A. I have been considering that since sitting here. Mr. Radcliffe spoke to me about it; I should think a low estimate, perhaps a fair estimate, would be $75, and from that upwards.

Q. How long do they usually last with proper care?

A. Oh, they will last with some small repairs, such as renewing the hose, which wears out rapidly on pumps—I don't know why they would not last the life-time of a vessel.

Q. Twenty years?

493 A. I should think they would, 15 or 20 years. Of course the boxes have to be packed occasionally, and the hose have to be renewed.

Q. A trifling expense?

A. Hose renewing is the least part of it.

WILLIAM H. RADCLIFFE, being first duly sworn, was examined in chief by Mr. CONDON, and testified as follows:

Q. Look at Exhibit B of Mr. Wilcox's deposition, and state what it contains—what work was done by you.

A. This bill pertains to work that was done by me on the schooner S. S. Osborn, commencing August 16th to Sept. 26th, when I got through. This bill was finished on the 21st.

Q. What will you say in regard to the prices charged for each item there?

A. They were the market prices at that time, and I think there is nothing over the market price at that time. I think I gave Mr. Wilcox a little under the market price in some items that I had on hand.

Q. Look at Exhibit C, and state about that also.

A. That was the last piece of work that I done for the vessel; it was a continuation of that. I could not finish the work right along until I got it out of the way, and there was four days' work in finishing around the windlass on the dock after I had made out this first bill.

Q. Then it was under your charge?

494 A. It was under my charge, and a part of the same repairs in consequence of the collision.

Q. You were repairing her from the 16th day of August on until the 26th of September. Was she repaired as rapidly as the facilities here would permit?

A. I think she was. I could not have used any more men without its being a damage both to myself and the owner of the vessel. They would have been in each other's way to have employed any more. The work was confined to a small part of the vessel, so I could not have employed any more men but what it would have been a disadvantage to all the parties concerned.

Q. So far as you could learn by what was said by Mr. Wilcox, and

his actions, was he or was he not anxious to have her ready for sea as soon as possible?

A. He was very anxious to have her ready for sea. He was crowding me in all shapes, and assisted me a great deal.

Q. Is there any item or charge contained in these two exhibits, B and C, that was for any other purpose than that rendered necessary by reason of this collision?

A. There is not. There is no charge there but what is actually necessary.

Q. What do you know about Exhibit R, the Herbert, Hawley and Co. charge?

A. That was for a stick containing 935 feet of timber that I purchased for a jib-boom. I did not have the timber myself, and went to the parties now known as the Cleveland Saw-mill Co.

Q. Was it used by you in repairing?

495 A. It was used by me for a jib-boom for this vessel. Mr. Wilcox furnished that money. I found I could buy it $5 a thousand cheaper than he could, and I told him he had better give me the money.

Q. The charge is reasonable.

A. It is reasonable.

Q. Did you repair all the items rendered necessary by reason of the collision to the Osborn?

A. I did not, sir. For I could not find a stick of timber in town to make a fore-yard for her. I found one we made a mast of, but it was too short, I had to splice it. I got it from Quayle and Martin (the bill is here presented); but for the fore-yard I could not find a stick, and telegraphed to Port Huron to know what they would furnish a stick for, a cut-water, and head, as we term it, for the vessel. They were not put on. They were not really any detriment to the vessel going about business, any more than she was not finished, was not complete, looked unfinished, and it was not done. Being in a hurry he thought he had better leave it until some other time. He asked me to make an estimate of what it would cost, and I made an estimate at that time; a reasonable one. This appears to be in my handwriting: "Estimated cost of heading, with gilding, &c., $150. For the fore-yard, $75." $75 I know was the cost of the yard afterwards, because they telegraphed me from Port Huron they would furnish him one ready-made when he came there at that price. $150 I consider a reasonable

496 figure. I would have done the work for that, and I don't think I could have done the work for less, if I had time. That was my estimate at that time.

Q. It is correct, to the best of your knowledge?

A. To the best of my knowledge.

Q. How long have you been in the business of repairing vessels?

A. I have been in the ship-building and repairing business ever since the year '42.

Q. Look at Exhibit A, and state what you know about it.

A. That is a bill presented by Quayle and Martin for two sticks. We purchased the first one for the mast, for which we paid $750. It was the best we could do. We ought to have got a stick, if there was one in the market, long enough. We ought to have bought it for that price; but it was the best we could find at that time. It was one he had for a vessel, and he had to send to Pennsylvania for one in the place of it.

Q. That estimate was reasonable?

A. It was a low estimate. $40 for the bow-sprit stick was reasonable.

Q. Suppose that you had been employed to repair the head and cutwater of this vessel as it should have been done to make it in similar condition to what it was before this damage, and furnish this yard, how quick could you have done that?

A. It could not possibly have been done—the head work could not possibly have been finished without detaining it at least five days, and I think more. It possibly could have been fixed in six days. Not within a shorter time; I am satisfied of that.

Q. You have done that work frequently?

A. I have done that work; dont it repeatedly.

497 Q. Do you know whether that was one of the reasons they did not have it done?

A. That was the very reason he did not have it done; freights were rising, and he was in such a hurry to get the vessel to doing something; he would not wait for it.

Q. (the MASTER): This was done at Huron?

A. The head was not put on yet. They got it made—got it at Huron, but the head was not put on until afterwards. I made a temporary repair the next time she came in here.

Q. (Mr. CONDON): What do you know about the captain and crew of the vessel while you were making these repairs on the schooner?

A. Some of them were helping me in the capacity of laborers. They went to Quayle and Martin's ship-yard, and got these spars out, different times, to the saw-mill; kept them generally pretty steadily employed until they went to rigging; we had been to work, I guess, two weeks or more before they commenced rigging, and then I had one or two of them helping me, probably.

Q. Were any of the crew around there employed during the time you were making these repairs?

A. I am pretty certain there were; between Mr. Wilcox and myself, we kept them pretty well employed. As a general thing Mr. Wilcox was with me, assisting me most of the time.

Q. If those seamen had not done the work, who would you have employed?

A. I would have employed mechanics to have done it.

Q. (the MASTER:) Did they work to as good advantage?

498 A. Most sailors are very useful men as assistants around a ship-yard, because they are a class of men that work in ship-yards all winter; men we employ as laborers when building a vessel as general thing.

Q. How did the prices paid these men compare with the prices you paid laborers?

A. Just the prices I would have paid laborers; that happened to be a high-priced time.

JOHN B. COWLE, being first duly sworn, was examined in chief by Mr. CONDON, and testified as follows:

Q. Look at Exhibit L to Mr. Wilcox's deposition, and state what you know about it.

A. That is our book-keeper's handwriting, and I looked over our book for '72 before I came up here, and I find it just the same as this; $91.61, that is correct; that is our book-keeper's handwriting.

Further hearing of testimony was here adjourned to 10 o'clock Friday, Sept. 27th.

Sept. 27th, 11 o'clock a. m. hearing resumed pursuant to adjournment.

BLISS O. WILCOX, being recalled, was examined in chief by Mr. CONDON, and testified as follows:

Q. When did the Osborn, after being repaired after this collision, leave Cleveland, and where for?

A. She was ready to leave the night of the 26th of September.

Q. What cargo did she take?

A. She took coal and pig-iron.

Q. What did the freight on that cargo amount to?

499 (Objected to.)

A. $2,235.65.

Q. When did that vessel arrive at Milwaukee?

A. It arrived October 2nd.

Q. How do you know that?

A. I know that from a telegram received from the captain.

Q. What kind of a cargo did she bring from Milwaukee?

A. Cargo of wheat.

Q. Where to?

A. Buffalo.

Q. What did it cost for the charter of the cargo?

A. $30.

Q. What did it cost to load it, and trimming?

A. Trimming, $90.

Q. What did it cost for the tow-bills in Milwaukee that trip?

A. $80.

Q. What did it cost for tow-bills through the rivers on the way down?

A. $155.

Q. What were the tow-bills for towing that cargo of grain into the port of Buffalo?

A. $34.

Q. What did the elevating and shovelling of the cargo cost about?

A. $250.

Q. How much wheat does she usually carry?

A. She will carry 40,000 bushels of wheat, or 1,130 or 20 tons of ore, gross tons.

Q. How much coal?

A. 1,100 tons.

Q. What did it cost to clear, report and telegraph your arrival?

500 A. $2.

Q. Was that done at Buffalo as well as Milwaukee?

A. Yes, sir.

Q. What were the wages of the men per day on the trip from Cleveland to Milwaukee, and Milwaukee to Buffalo; how many men did she carry?

A. She carried six men.

Q. What were their wages per day?

A. $3.

Q. What wages did the mates and steward receive per day?

A. The steward and the second mate received $3.33 a day each.

Q. What were the captain's wages?

A. The captain's wages were $1,200 for eight months; might say, the season of sailing.

Q. What did that amount to a day?

A. $5.

Q. What did the board of the men per day cost on an average?
A. Cost all of six shillings a day.
Q. 75 cents each?
A. Yes, sir.
Q. What did it cost for tow-bills in Cleveland in towing the iron-ore and coal here, and transferring it outside?
A. $72.
Q. Did you sustain any loss on the freight that your vessel was carrying at the time of this collision?
A. Shortage on wheat.
Q. I mean the iron-ore, when she was struck at the time of this collision?
A. Yes, sir; 20 cents a ton.
Q. Why was that?
501 A. Because, on account of the collision, we were damaged, and we could not perform the contract to Erie.
Q. How many tons did you have on that trip?
A. 1,014.
Q. The consignees took it here instead of at Erie?
A. Yes, sir.
Q. And deducted 20 cents a ton from your freight?
A. Yes, sir.
Q. That would be over $2,000, wouldn't it?
A. Yes, sir.
Q. After deducting from the gross freight that a vessel such as the Osborn would make, all these charges that I have mentioned occurring on her up and down trip, the balance would be what?
A. Net profit.
Q. What rate per bushel did she get on the grain on that down trip?
A. 19 cents.
Q. How have you obtained the figures that you have given in regard to these items of expense, and from where?
A. From the vessel's book.
Q. In whose handwriting are they?
A. They are in the captain's handwriting.
Q. Did you examine them during those trips, or shortly afterwards?
A. Examined them in our settlement when we closed up business in the fall.
Q. Do you know whether they are correct or not?
A. They are settled as correct.
Q. Do you know whether they are correct or not from your experience in running vessels?
A. Yes, sir.
Q. You say they are?
502 A. Yes, sir.
Q. Where is the captain now?
A. He is in Kansas.
Q. Is this a book of original entries from which you derive those facts?
A. Yes, sir.
(Vessel's book of the S. S. Osborn for the season of 1872 was here offered in evidence.)
Q. Upon looking over the exhibits I find one for a small boat to Grover and Son, of $103, marked in the month of December. Do you know whether that small boat sustained any damage at the time of the collision of your own knowledge?

A. No, sir.
Q. You don't know whether that is a proper charge in this case or not, do you?
A. I do not, sir.

Cross-examination by Mr. TERRELL:

X Q. You were carrying iron ore at the time of this collision?
A. Yes, sir; had been.
Q. How long had you been carrying iron ore?
(Objected to as immaterial.)
A. I carried it up until the time of the collision.
Q. During the whole season?
A. Yes, sir; up to the time we had the collision.
Q. From Escanaba to Erie all the while?
A. Yes, sir.
Q. Who were the consignees in Erie?
A. I will have to refer to the book—The Erie and Pittsburg R. R. Co.
503 Q. Do you know who owned it?
A. I think it was belonging to the Cleveland Rolling Mill Company.
Q. Had you been carrying their ore all the season?
A. It was all one kind.
Q. All one kind of ore?
A. Yes, sir.
Q. Had they been the owners of all the ore you had been carrying that season up to that time?
A. I believe they were.
Q. Was your boat chartered?
A. There was a charter made. I claim they broke the charter.
Q. There was a charter made?
A. Yes, sir.
Q. With whom?
A. Miller and Bates.
Q. They were vessel agents?
A. Yes, sir.
Q. Made both in their own names, and behalf of the Cleveland Rolling Mill Company?
(Objected to as incompetent.)
A. I don't recollect particularly about that.
Q. Where is the charter?
A. That is more than I can tell. I expect some of you lawyers have got it.
Q. You don't mean I have got it?
A. I don't know. I could not say who has got it.
Q. You haven't got it?
A. No, sir; I haven't got it.
Q. Did you have a copy of it?
A. I had a copy.
Q. Where is that?
A. I can't find it.
504 Q. That is lost, is it?
A. That is the one I was speaking of. I suppose the other parties have the other one; probably you know.
Q. No, sir; if I did know I should not ask the question.
Q. Don't you think your charge of $10 per day is a little high?

A. It may be. I leave it to the court to say.

Q. (Mr. CONDON.) While this vessel was being repaired was she, in your opinion, under charter or not?

(Objected to.)

A. I did not consider it under charter.

Q. From your recollection of the charter were the terms of it complied with on the part of the charterers?

(Objected to.)

A. No.

Q. Why?

A. Because the agreement was I should have half the ore to Erie, and a half to Cleveland.

Q. Was ore given you to carry to both places?

A. No, sir.

Q. Were you ready and willing to carry to both places?

A. Yes, sir.

Q. Why didn't they give it to you, if you know?

A. Because they wanted I should take it to Erie.

Q. (Mr. TERRELL.) You took it to Erie, didn't you?

A. All but the load delivered here in a crippled condition.

Q. You took all of the balance to Erie?

A. Previous to that.

Q. You had started to Erie with that at the time of the collision?

A. We were bound for Erie.

505 Q. (Mr. CONDON.) On the pig-iron and coal which the Osborn took from Cleveland about the 27th of September to Milwaukee, were there any charges to the vessel for loading or unloading, or was it free of handling to the vessel?

A. Free of handling; yes, sir.

Q. (Mr. TERRELL.) Who was it carried for?

A. It was shipped from Reddington's block.

Q. (Mr. CONDON.) You don't know who it was consigned to?

A. I don't know without reference to the bill of lading—I mean the pig-iron.

Q. Who shipped the coal?

A. I could not tell you without the bill of lading.

Q. Which you haven't got here?

A. No, sir.

Q. Did the schooner S. S. Osborn incur any other expenses than these you have named, on those trips?

A. No, sir; not that I know of.

Q. When did the S. S. Osborn leave Milwaukee with that 19 cent cargo of grain?

A. Cleared October 9th from Milwaukee.

Q. How do you know that?

A. I know that from the books.

Q. Did you get any despatch from there?

A. Got one Oct. 2nd; that is, on the arrival.

Q. Did you get one on the 9th stating he had started?

A. I think I got two despatches from him while he was in Milwaukee.

Q. Did you get one on the 9th notifying you that she started, or was to start that day?

A. Yes, sir.

Q. When did you learn and how that she had arrived in Buffalo with that cargo?

506 A. By a despatch.

Q. When?

A. On the 16th of October.

Q. So she was from the 9th to the 16th making the down run?

A. Yes, sir.

Q. About what was her average run from Escanaba to Erie with ore?

A. The average run would be to run down from Escanaba and those places six days.

Q. About how long to run back?

A. About the same time.

Q. In making the round trip from Escanaba and down and unloading and running back would average about how many days altogether?

A. Well, it would not vary far from 16 days; it might go a little over.

Q. When she carried a cargo of grain, how was it about the delay in unloading usually?

A. Well, in carrying grain to Buffalo, I see by the books she cleared the same day she arrived.

Q. That indicated that she had unloaded when?

A. That she had unloaded the same day.

Q. While you were running to Erie that season did you take any up freight—any cargoes?

A. I find on looking at the book I did not take any up-freight up to the time of the collision.

Q. Do you know whether it is usual for sailing vessels to make any better time during the month of Sept. and the latter part of August than in June and July?

A. Yes, sir.

Q. Why?

507 A. Because they have more wind than they have in June and July.

Q. What kind of wind usually prevail in the fall on the lakes?

A. They are westerly and southwesterly winds.

Q. Are those the best for the purpose of sailing?

A. They are for coming down; they are fair all the way going up; from this port up; they are fair until they work under Beaver harbor or Grand Island, and, of course, they bear ahead.

Q. The vessels tow through the rivers always?

A. Yes, sir; tow through the rivers both ways, large vessels, all of them.

EGBERT DE VILLE, being first duly sworn, was examined in chief by Mr. CONDON, and testified as follows:

Q. Did you know the schooner S. S. Osborn in '72?

A. Yes, sir.

Q. Did you know about how much iron ore she carried and how much coal?

A. Yes, sir.

Q. State.

A. My recollection is she used to bring down from 11 to 1,130 tons of ore.

Q. Gross or net?

A. Gross.

Q. How much coal would she carry?

A. I don't know exactly how much she would carry; used to make out about 1,100 tons.

Q. Her grain capacity was about how much?

508 A. As far as I know she used to carry about 40,000 of wheat, as near as I can tell.

Q. If the gross freight on grain or ore is stated, and the cost of procuring charters for each are given, the cost of loading the grain, tow-bills at the port of shipment, tow-bills through the rivers, tow-bills to elevator on dock or place of delivery, and cost of elevating and shoveling grain, cost of reporting and clearing and telegraphing owner at each end, wages of the crew during the trip, and cost of fitting are given, that which remains of the freight will be what?

A. The net earnings.

Q. Was it usual at that time for the owner to pay for the loading or handling of the coal?

A. No; they usually shipped it free of handling.

CORNELIUS REWELL, being first duly sworn, was examined in chief by Mr. CONDON, and testified as follows:

Q. You knew the schooner S. S. Osborn in '72?

A. Yes, sir.

Q. About what quantity of iron ore would she carry?

A. About 1,100 and 10 or 12 tons, along there.

Q. About how much wheat?

A. I don't know, but I should think from what ore she carried she would carry about 40,000; I could not tell, for I never was with her in the grain trade.

Q. You were with her in the ore trade?

A. Yes, sir.

Q. You had the opportunity to know how much she would carry?

509 A. Yes, sir.

Q. You heard Captain De Ville's testimony, did you not?

A. Yes, sir.

Q. You heard his statement about obtaining the net earnings of the vessel?

A. Yes, sir.

Q. By deducting the expenses that were stated to him?

A. Yes, sir.

Q. And the rest would be the net profits?

A. Yes, sir.

Q. That you consider the proper way?

A. Yes, sir.

Q. Do you know of any other charges that the vessel would be apt to incur as expenses on the trip, besides those stated?

A. No, sir; I do not.

LYDIA WILCOX, being first duly sworn, was examined in chief by Mr. CONDON, and testified as follows:

Q. Do you know what is the average trip from Escanaba of the schooner Osborn, say in '72?

A. Running down from Escanaba about 14 or 15 days.

Q. That is the round trip—going down, unloading and going back?

A. Yes, sir; I think they average about 15 days.

Q. What means did you have of knowing that?

A. Well, from knowing when she arrived.

Q. State how you knew it?
A. By her arrival here and getting despatches.
Q. Here in Cleveland?
510 A. In Cleveland and Escanaba. May be I don't understand you.
Q. State all that you know about it?
A. I know that.
Q. Did you see the despatches from the captain when he was leaving and when he would arrive?
A. Yes, sir.
Q. Where did your husband keep the records, the book and correspondence in regard to his business?
A. It was in our house—in my sitting-room. Often despatches would come to me. I would receive them at the house, and open them.
Q. You had been aboard of her several trips?
A. Yes, sir; we often made the run in five days up.
Q. From Erie to where?
A. To Escanaba.
Q. She was considered what kind of a sailor?
A. Good.
Q. There have been exhibits attached to Mr. Wilcox' deposition, charges for towing the schooner S. S. Osborn, by the City of Detroit.
A. The first was the City of Concord.
Q. The Northern Transportation Company?
A. Yes, sir.
Q. Do you know anything about that tow-bill?
A. Yes, sir; I know she towed her from Fox Island to Mackinaw.
Q. The next morning after the collision?
A. Yes, sir; the next morning; took us about 11 o'clock, got in there in the evening some time.
Q. The City of Detroit, what did she do?
511 A. She towed us from Mackinaw to the rivers. The St. Clair river and Port Huron.
Q. Were you delayed any at Mackinaw?
A. We were there 3 days; between two and three.
Q. What detained you there?
A. Waiting for something to tow us down.
Q. There has been a charge of John Bates there at Mackinaw, $5; what was that for?
A. Dockage.
Q. While you were mooring at his dock?
A. Lying alongside the dock.
Q. The tug Kate Williams. What about her bill? She towed you from where?
A. From Port Huron to Cleveland.
Q. (Mr. TERRELL.) Will the books show the trips of the boat?
A. I don't know whether they will or not.
Q. Do they show when she entered, and when she cleared, and show each trip up to the time of the collision?
A. I never looked to see whether they did or not.
Q. (Mr. CONDON.) Do you know whether or not in the latter part of August and the month of September, the winds are fresher, and vessels make any better time than they do in July?
A. Yes, sir; sometimes they make better time in the fall?
Q. Is there any difference?

A. I could not say.
Adjourned to 2 o'clock p. m.

Met pursuant to adjournment.
Mr. WILCOX recalled, was examined in chief by Mr. CONDON, and testified as follows:

Q. Suppose that the Osborn were running with ore from Escanaba to Cleveland, instead of Erie, how much shorter would her trip be on an average—her run down be?

512 A. About a day—not to exceed a day.

Q. What is about the usual time required to discharge a cargo of coal or iron ore with prompt despatch, in Erie or in Cleveland, or coal in Chicago or Milwaukee?

A. The Osborn has been unloaded in a day and about a day and a half in Erie, and I guess it takes two days here, or two and a half.

Q. Coal at Chicago or Milwaukee, about how long?

A. Two to three days.

Q. Do you know whether or not from the 15th of August to the 20th of September, there was a demand for such vessels as the Osborn for grain, coal, and ore carrying business?

A. Yes, sir.

Q. You are positive charters could be obtained if she were ready?

A. Yes, sir.

WILLIAM GOODWIN, being first duly sworn, was examined in chief by Mr. CONDON, and testified as follows:

Q. State your name, age, residence, and occupation?

A. William Goodwin; 40 years of age; residence, Cleveland; occupation, a ship-broker.

Q. How long have you followed that occupation?

A. About eight years—between seven and eight.

Q. Who is your copartner?

A. Mr. H. J. Webb.

Q. What business were you in in August and September, '72?

513 A. In the same business.

Q. Chartering vessels?

A. Chartering vessels and engaging cargoes.

Q. Do you know what the coal freights were from Cleveland to Chicago and Milwaukee on or about the 15th of August, '72?

A. On a vessel of that size, $2 a ton, free, net; on smaller vessels it would be $2.10. I mean by that, no expense of handling.

Q. Free in and out?

A. Yes, sir.

Q. Do you know what they were on or about September 5th, '72, on coal?

A. Yes, sir.

Q. What were they from Cleveland to Chicago or Milwaukee on a vessel the size of the schooner S. S. Osborn?

A. About $2.10, free.

Q. Do you know what they were on or about the 16th of August? If so, state, for a vessel the size of the S. S. Osborn?

A. There is a charter on the 14th at $2.10; on the 16th, $2.25, and they went up and down. Smaller vessels, I should think, about the same, would be fair, $2.10 and $2.15; but I don't see any charters at $2.15, free, in and out (referring to memorandum).

Q. I notice you refer to a paper; what is that?

A. It is a record from our day-book.
Q. And a copy of your day-book containing what?
A. Containing our charters from day to day, as we made them.
Q. At that time?
A. Yes, sir.
Q. In whose handwriting is that?
514 A. My own.
Q. Do you know that the rates stated in there are correct?
A. Yes, sir.
Q. The information you have given in your testimony has been derived from an inspection of the original books?
A. From our actual transactions recorded in our book at that time.
Q. Were you chartering vessels for iron-ore cargoes at that time?
A. Yes, sir.
Q. State what rates were paid for carrying iron ore on or about the 16th of August, '72, vessels of the size of the S. S. Osborn.
A. We haven't got from August 15th to September 14th, along there; we haven't got Escanaba charters; it was all Marquette, and the S. S. Osborn was really not a Marquette vessel. I can give you the rates from Marquette; she was a little too large; it would not be profitable.
Q. Do you know how the freights to Marquett' at that time compared with those to Escanaba?
A. I could not swear from any actual knowledge. If you paid $4 from Marquette, an Escanaba charter would be about 3 dollars and a quarter. If it was $6 to Marquette, to Escanaba it would be $5; but the freights to Marquette at that time were $4.
Q. Do you know what the freights were about the 1st to the 3rd of September on ore from Escanaba?
A. We haven't got any charter in Sept. earlier than the 6th.
Q. What were they then?
A. $5.75 from Marquette to Erie would be about the same as
515 to say $4.75 from Escanaba to Cleveland.
Q. Do you know what the rates were for vessels of that class carrying ore from Escanaba the 16th and 17th?
A. Yes, sir. There were three charters at $5 a ton, one on the 16th, one on the 17th.
Q. Do you know whether there was a demand for vessels of the size of the S. S. Osborn during the time from about the 16th of August to the 26th of September?
A. Yes, sir; there was a lively demand for vessels.
Q. Do you know about the average length of time the S. S. Osborn—such a vessel—makes the trip from Cleveland to Escanaba and back?
A. I should think about 15 or 16 days. I know the schooner Escanaba made 15 trips in one season, running light—the one that George Stone sailed. The ordinary trip from Cleveland and back would be about 15 days, perhaps 16.
Q. Does that account for loading and unloading?
A. Yes, sir; that gives time for discharging.

EXHIBIT H.

DETROIT, 14*th August*, 1872.

Sch'r S. S. Osborn to prop'r City of Detroit, Dr.

To towing from Mackinaw to Port Huron..... $500 00

Rec'd pay.

JOHN PRIDGEON,
Owner of City of Detroit.

To B. O. WILCOX, Esq.,
Painesville, Ohio.

520 EXHIBIT J.

Schooner S. S. Osborn to A. Lecour, Dr.

1872.				
Sept.	4th.	To 5 hours' work repairing bolt for masthead and cross-tree bolts, @ 80c	4 00	
		To one band for gib-boom, @	4 00	
		" 15 hours' work on truss bands, @ 8 ct'	12 00	
		" 79# iron, @ 5½c	4 35	
	6th.	" 2 draw bands, 112#, @ 12½c	14 00	
	7th.	" Repairing 2 draw bands	2	
		" 122# iron for bolt sprit-cap, @ 12½c	15 25	
		" one marlinspike steeled	50	
		" one bolt repaired	25	
	11th.	" 14 hours' work making straps, &c., repairing straps & 7 bevelled washers, @ 5c	11 20	
		To 75# iron, @ 5½c	4 13	
	12th.	" 165# for strap for forestay & cat-head, 12½c	20 63	
		" 1½ hours' work on shackle & thimble, @ 80c	1 20	
		" 2 new thimbles	1 00	
	16th.	" 11 bolts repaired, @ 40c	4 40	
		" 13# nuts, @ 12½c	1 63	
		" one auger repaired	20	
	17th.	" 3 links on bowsprit shroud	1 20	
		" 2 " repaired	30	
		" 2 bolts & 2 bevell washers	1 00	
		" 2 shackles	3 00	
		" strap'ing one bull's-eys	75	
		" one eye-bolt & thimble, 23#, @ 12½c	2 88	
	19th.	" 4 bolts repaired, @ 40c	1 60	
		" 2 bevell washers	50	
521		To 2 connection rods & 2 shackle for a *vinly*	5 00	
		" 4 bolts repaired, @ 20c	80	

	"	1 " for gib-boom, 11#, @ 12½c	1 38	
	"	45# chain for back ropes, @ 8c.	3 60	
	"	3 bolts for cat-head, 20#, @ 12½c	2 50	
	"	2 bands for anchor-stock, 36#, @ 12½c	4 38	
	"	8 bolts, @ 25c	2 00	
	"	1 " for shackle	25	
20th.	"	2 hing'-bands, 75#, @ 12½c	9 38	
	"	2 links on chain	50	
	"	6 chain hooks, @ 40c	2 40	
	"	16# bolts, @ 12½	2 00	
	"	1 connection rod repaired	1 00	
	"	1 stand for station-boom	50	
	"	1 link on ring stopper	25	
21st.	"	3 eye-bolts	1 50	
	"	1 devil's clan	75	
	"	26# bolts, @ 10c	2 60	
	"	107# strap for rail & norman, @ 12½c	13 38	
				$166 14

Rec'd payment.

A. LACOUR.
PATRICK KERINELLY.

522 EXHIBIT K.

CLEVELAND, O., *Dec.* , 1872.

Schooner S. S. Osborn bought of J. W. Grover and Sons, ship-chandlers and grocers, importers and wholesale dealers, 65 & 67 River st., & 97 & 98 Dock:

1 small boat 103 00

Paid.

J. W. G. & SONS.

EXHIBIT L.

CLEVELAND, O., *Sept. 20th*, '72.

Schooner S. S. Osborn bought of Globe Iron Works, office & works cor. Elm & Spruce st's, W. side:

Sept. 9th.	To 1 24" windlass	97 00
	Less bale and lever, 98 #, @ 5½	5 39
		$91 61

Received payment.

GLOBE IRON WORKS,
Per R.

523 EXHIBIT M.

CLEVELAND, O., 19*th Sept.*, 1872.

Schooner S. S. Osborn bought of Upson and Walton, importers and dealers in steel and galvanized wire rope, &c., 129 & 131 River st., and 140 & 141 Dock:

Sept. 2nd.	531 ℔	4½″ galv'd w. rope	13½	71	69	
	20	5″ galv'd hanks	30c	6		
3rd.	82 ft.	4″ galv'd W. rope, 190″				
	215 ft.	3½″ do. 342–532″	13½	71	82	
	28	3¼″ galv'd hanks	22	6	16	
9th.	3 ℔	Seizing wire	2s		75	
						156 42
23rd.	180 ft.	3½″ galv'd wire rope 277 ℔	13½	37	40	
	26	3½″ galv'd hanks	22	5	72	
						43 12
						199 54
	7	4 ℔ galv'd iron hanks	25			1 75
						201 29
	2					
	2	3½ ℔ " " "				44
						201 73

Rec'd payment.

UPSON & WALTON,
L.

10, 21, '72.

524

EXHIBIT N.

CLEVELAND, O., *Sept.* , 1872.

Schooner S. S. Osborn bought of Upson and Walton:

1	6″ Badger pump		$70
16	4/12 ft. pipe 3½ in. flue	85	13 88
	Splicing pipe		2
			85 88

Rec'd payment.

UPSON AND WALTON,
L.

EXHIBIT O.

CLEVELAND, O., *Nov.* 1*st*, 1872.

Schooner S. S. Osborn bought of S. B. Conklin, sail-maker, &c.:

For making fore S. sail, 184 yds. No. 0 cotton duck, 66c..... $121 44

Rec'd payment.

H. C. MILLES & CO.

Nov. 2, '72.

$121.44.] PAINESVILLE, O., *Nov.* 2, 1872.

FIRST NATIONAL BANK.

Pay to S. B. Conklin, for sch'r Osborn, or bearer, one hundred and twenty-one 44/100 dollars.

B. O. WILCOX.

525 EXHIBIT P.

CLEVELAND, O., *Sept. 21st*, 1872.

Schooner S. S. Osborn bought of John O'Neill, No. 117 River st. and Dock:

Aug. 19,	11# hooks	176/16	15 sail needles	15/5	2 51
	3 sail hooks	30/10			30
	13, 12# spun yarn	216/18	12# marline	300/24	5 16
Sept.	2, 2# hamborline	150/24	2 yds. pas. ce'ling	36/24	86
	" 56½# spun yarn	904/16	6 yds. #3 canvass	216/48	11 80
	" side leather				2 00
	4, 31# spun yarn	496/16	10# putty	70/7	5 66
	7, 1 bbl. tar	600	6 gal. B. oil	600/100	12 00
	" 50# Eng. W. lead	600/12	29½# tar'ed rope	531/18	11 31
	12, 7#			7/7	49
	16, 3 oz. spung	30/18	1 P# top head	63/24	1 01
	" bill paint				32 00
	" 6½# putty	45/7	1 box lamp black	10/24	55
	" 147# M. rope	2940/20	72# 18 thread rattling	1224/17	41 64
	17, 90 tar'ed rope	1620/18	4# le slaps	800/24	17 20
	18, 5# houslen	125/24	10# nails	70/7	1 95
	" 103½ M rope	2070/20	4 capisin spars	300/75	23 70
	" 6# hamborline	150/24	25# tar'ed rope	450/18	6 00
	21, 1 set signal-lamps, new style				35 00 not pd
	19, 2 seam brushes	75/24	7# M rope	140/20	2 15
	20, 38½ tarred rope	693/18	10 gal. boiled oil	1150/115	18 43
					231.72
	21, 7# spun yarn	126/18	2½# hamborline	63/24	1 89
	152# M rope	2888/19	3 doz. 1 in. thimbles	4	30 38
	3 doz. stables	75/24	1 saw file	20c	95
					33.22
					264.94

Rec'd payment.

J. O'NEILL,
F. R.

526 EXHIBIT Q.

CLEVELAND, O., *Sept. 7th*, 1872.

Schooner S. S. Osborn bought of R. T. Lyon and Son, general commission merchants, Nos. 65 and 67 Merwin street:

5 bbls. of salt, 1.90 ..... 9 50

Rec'd payment.

R. T. LYON AND SON,
W.

EXHIBIT R.

B. O. Wilcox, sch'r S. S. Osborn, bought of Hebard, Hawley and Co.:

935 ft. round timber, $40 .... $37 40

August 26th, '72.
Rec'd payment.

W. H. RADCLIFFE,
Per H. & HAWLEY.

EXHIBIT S.

Schooner S. S. Osborn, in acc't with Wm. Smith.

To refitting and fitting out vessel and repairing sails, helping. $410 00
Shipping foremast, bowsprit, and jib-boom.....

I certify the above bill is correct and paid Sept. 24th, '74, by B. O. Wilcox.

WM. SMITH.

527 EXHIBIT T.

Schooner S. S. Osborn to John Bates, Dr.

For dockage and attendance..... $5 00

Rec'd payment.

JOHN BATES.

MACKINAW, 12*th Aug.*, 1872.

EXHIBIT U.

CLEVELAND, O., *Sept.* 21*st*, 1872.

Schooner S. S. Osborn bought of A. T. Van Tassel & Co., dealers in hardware and stoves:

24 bolts	2 40
Galv. iron	3 05
Copper nail	50
Labor	1 50
	7 45

Received payment.

A. T. VAN TASSEL & CO.

528 EXHIBIT V.

$30.00.] CLEVELAND, *Aug.* 31*st*, 1872.

Received of sch'r S. S. Osborn thirty dollars, for fifteen days' work in full up to date.

WM. SMITH.

$30.00.] CLEVELAND, *Aug.* 31*st*, 1872.

Received of schooner S. S. Osborn thirty dollars, for fifteen days' work in full up to date.

JAMES O'NEILL.

$30.00.] CLEVELAND, *Aug.* 31*st*, 1872.

Received of schooner S. S. Osborn thirty dollars, for fifteen days' work in full up to date.

JOHN McDONALD.

$30.00.] CLEVELAND, *Aug.* 31*st*, 1872.

Received of schooner S. S. Osborn thirty dollars, for fifteen days' work in full up to date.

PETER LIEB.

EXHIBIT W.

MILWAUKEE, *Oct. 5th*, 1872.

Received of schooner S. S. Osborn thirty-two dollars eighty-eight cents, in full for services and job work.

JOHN FELL.

529 EXHIBIT X.

$60.00.] CLEVELAND, *Sept. 9th*, 1872.

Received of schooner S. S. Osborn, for services as cook for twenty-four days, at seventy-five dollars per month, sixty dollars.

SYLVESTER SMITH.

EXHIBIT Y.

CLEVELAND, *Sept. 28th*, 1872.

Estimated cost of head cut-water on gilding (one hundred and fifty dollars)	$150 00
Foreyard (seventy-five dollars)	75 00
	$225 00

WM. H. RADCLIFFE.

530 W. G. WINSLOW ET AL. }
vs. }
THE SCH'R S. S. OSBORN. }

Hearing before A. J. Ricks, master, December 18th, 1878.
Present, Loren Prentiss for the sch'r S. S. Osborn.

C. REWELL, called and sworn, was examined in chief by Mr. PRENTISS, and testified as follows:

Q. You reside in the city of Cleveland?
A. Yes, sir.
Q. What has been your business for the last dozen years or more?
A. Sailing.
Q. In what capacity?
A. Master.
Q. Have you resided in Cleveland during all that time?
A. Yes, sir.
Q. Sailed from this port to what ports?
A. Escanaba, Marquette, Chicago, Milwaukee—pretty much all of the ports on the lake.
Q. In the ore trade and grain trade?
A. Yes, sir; mostly in the ore trade.
Q. Have you sailed this season?
A. No, sir.
Q. The season previous, '77?
A. Yes, sir.
Q. Continuously up to that time?
A. Yes, sir; since '46.
531 Q. For whom have you sailed on your own account?
A. For Captain Bradley.
Q. Sailed between Cleveland, Chicago, and Buffalo?

A. Yes, sir.

Q. You are well acquainted with all those routes?

A. Pretty well.

Q. During the time you have been sailing have you been acquainted with the length of voyages between Cleveland and Escanaba, and between Chicago and Buffalo?

A. Yes, sir; some.

Q. And the charges and expenses of running vessels?

A. Yes, sir.

Q. Also the rates of freights that have prevailed during the time?

A. Yes, sir.

Q. You may state whether you have a general knowledge of the going rates of freight through August and Sept., 1872.

A. Yes, sir; but the vessel I was in then was contracted in the spring for the season.

Q. But you had a general knowledge of the freights of that year?

A. Yes sir.

Q. Were you acquainted with the schooner S. S. Osborn?

A. Yes, sir.

Q. Do you know the amount she would carry in ore and grain?

A. Well, she would carry a little over 1,100 ton; I suppose 1,110, 1,115, or 1,120, probably, along there.

Q. Tons of ore?

A. Gross tons; yes, sir.

Q. Of wheat about how much?

A. About 40,000 bushels, I should think.

Q. Have you a recollection as to the demand or lack of demand
532 for vessels in 1872, in August and September?

A. There was quite a demand for vessels then.

Q. Any difficulty in getting employment for any good vessel?

A. No difficulty at all.

Q. Taking things as they were from the 9th of August, '72, and up to the 26th of Sept., inclusive, the same year, what would be the net value of the use of the S. S. Osborn during that time per day?

A. Well, I should think from $210 to $220.

Q. What would be the difference between the net value of the use of the Osborn for that period and of the American Union, assuming the American Union to carry, say, 840 or 850 tons of ore, and a proportionate amount of wheat or grain?

A. I could not tell exactly without figuring on it, because the American Union would carry about 850 tons, somewher's there, and the Osborn over 1,100, and there would be just that much difference of course. I could not tell exactly without figuring on it.

Q. Suppose the difference to be, say, 280 tons, that the Osborn would carry that much more, about how much a day would that make her worth more than the Union?

A. I could not tell that without figuring on it some; but of course she would be worth more, because the Union's expenses would be just about as much as the Osborn's expenses would be; she would have the same number of men; got to have two mates, captain, and cook, all the same; and about all the difference would be in discharging; she
533 would not have as much to pay in discharging, and the towing bills would not be quite as much.

Q. Suppose the Osborn to carry 280 tons more, how much would that increase the expenses of the Osborn over and above what the expenses of the Union would be if carrying 850 tons?

A. Not but little; because, as I said before, she had the same number of men, and the same amount of provisions.

Q. Would it make a difference of over $75 or $80 in her actual expenses?

A. I should not think it would.

Q. Take the freight on that additional amount and deduct from it the expenses, and what would that represent?

A. I don't understand that.

Q. It would represent the difference in the earnings, wouldn't it?

A. Why, yes; of course it would.

Q. So the net use of the Osborn would be worth as much more then than the Union as the difference in earnings would show?

A. I should think it would.

Q. What do you say would be the difference per day?

A. It would be the difference the amount of the freight would come to.

Q. What would be about the average length of voyage from Cleveland to Escanaba and back, making all allowances for the weather; an average trip for that season of the year?

534 A. Well, I should think about 15 days, and I can give you my reason for thinking so: The year before, I think it was, I came into Cleveland 5 trips handrunning on Monday morning alternately; that was 14 days, you see, five trips handrunning; but fifteen days, I think, would be about the average.

Q. That includes the delays—loading and unloading?

A. Yes, sir; the round trip.

Q. (The MASTER.) Those five trips you made were from Escanaba?

A. Yes, sir.

Q. (Mr. PRENTISS.) Vessels have made the trip in as low as nine or ten days?

A. I made the trip once in eleven days, and only once; and I have been three weeks at it; but 15 days is about the average. That has been my experience.

Q. (The MASTER.) You base your estimate of the value of this boat upon that particular season?

A. Yes, sir.

Q. (Mr. PRENTISS.) And that part of the season?

A. I can give you my reason for that: As I said before, the vessel that I was in was the Bradley; we were contracted that year for $2.50 for so many trips, but I don't know the number of trips.

Q. $2.50 a ton?

A. Yes, sir; with the privilege of hauling off one trip, when we chose to go where we liked.

Q. What were you hauling?

A. Iron ore. Captain Bradley contracted with Webb at $5.00 for ore; that was double what we were getting.

Q. (The MASTER.) When was that?

535 A. That was, I think, the 16th of September, '72. This statement, I think, can be got from Mr. Webb's books; I know it can. The Thomas Quayle was chartered on or about the 16th of September for four trips, at $5.00, from Escanaba to Cleveland, for ore.

Q. What would be the length of trip from Cleveland to Chicago with coal, and Chicago to Buffalo with wheat that season of the year?

A. Well, I should think about twenty-two days.

Q. That would include the loading and unloading?

A. Yes, sir. Well, you have the average; of course, sometimes you

would make a good deal quicker trip up; sometimes get a good passage to Chicago, and sometimes a bad one; I should think the average would be about 22 days. I have made it shorter and been longer.

J. H. ANDREWS, called and sworn on behalf of the respondent, was examined by Mr. PRENTISS, and testified as follows:

Q. Where do you reside?
A. Painesville, Ohio.
Q. How long have you lived there?
A. I have lived there ever since 1834.
Q. What is your occupation?
A. Seafaring life.
Q. In what position?
A. Master of a vessel.
Q. For how many years past?
A. I have been master of a vessel for about 27 years, I guess.
Q. On the lakes?
536 A. On the lakes.
Q. How long have you sailed from the port of Cleveland to the different ports upon the lakes?
A. I think I have sailed a vessel out of here 26 years.
Q. Did you sail in '72?
A. A part of the year.
Q. What portion?
A. I made one voyage in the spring, and one and a half in the fall.
Q. Vessel laid up for repairs during the summer?
A. No; I was building a vessel.
Q. During the time you have sailed on the lakes what ports have you sailed to and between?
A. I guess there is hardly any that I have not been to.
Q. You are well acquainted with the sail between Cleveland and Escanaba?
A. Yes, sir.
Q. And Cleveland, Chicago, and Buffalo?
A. Yes, sir.
Q. And the ports on the lakes generally?
A. Yes, sir.
Q. During the time you have been sailing have you had general knowledge in relation to the length of the voyages between those points, the rates of freights, and the expense of running the vessel?
A. I suppose I have; yes, sir.
Q. And as to the earnings of the vessel?
A. Yes, sir.
Q. State whether you had such general knowledge of the freights, expenses, etc., of vessels in '72, during August and September.
537 Q. Was you acquainted with the S. S. Osborn?
A. Yes, sir.
Q. Suppose that the Osborn will carry from 1,120 to 1,130 tons of ore, or 40,000 bushels of wheat, and taking the times as they were in 1872 for vessels, from the 9th of August, say, up to and including the 26th of September, what would be the net value of the use of the vessel per day during that time, in your judgment?
A. I should say over $200.00.
Q. Do you know the American Union?
A. Yes, sir.
Q. Suppose that she would carry from 840 to 850 tons of ore and a

proportionate amount of grain, what would be the difference in the net value per day in the use of the Osborn over that of the Union?

A. Whatever would be the amount of the ore she would carry, less the expense of handling it.

Q. Suppose there was a difference of 275 or 280 tons, what would be the difference in expense that the Osborn would have more in carrying that large a quantity?

A. Allowing a certain rate for handling it, I suppose?

Q. About what would the expense be without going into the details—everything?

A. If I remember right it was about 20 cts. a ton for handling it.

Q. Any other charges—any additional tonnage?

A. Well, there would probably be $5 to $8 difference in trimming the two vessels.

Q. How much in the towing, if anything?

A. Perhaps $10 or $12 in the towing.

Q. Any other expenses of the vessel than those you have mentioned?

538 A. No other that I know of.

Q. It would be worth as much more as the freight would be worth more, deducting those expenses?

A. Yes, sir.

Q. How much over $200.00 would the Osborn be worth at that time? You said over two hundred dollars; how much over?

A. I should think $215 or $220 a day.

Q. How would the value of the use of the vessel be, say from the 26th to the 20th of September, 3 days more?

A. The same rate I should judge.

Q. (The MASTER.) What time does navigation close, generally, on the lakes?

A. Some years it closes earlier than others; as a general thing, by the first of December; still, I have run a good deal later than that.

Q. (Mr. PRENTISS.) What would be the average length of a voyage from Cleveland to Escanaba and back, going up light and coming down with ore?

A. Fifteen days.

GEORGE STONE, called and sworn on behalf of the respondent, was examined in chief by Mr. PRENTISS, and testified as follows:

Q. State how long you have been a captain on the lakes.

A. I commenced in the fall of '48.

Q. Been sailing as captain ever since?

A. Yes, sir.

Q. Every season?

539 A. Yes, sir; every season.

Q. On your own account?

A. Partly, and Capt. Bradley's firm, and before that I was in with another gentleman.

Q. During all that time you have been sailing from what ports to what ports?

A. Well, most all, I guess, that is on these waters.

Q. Have you a general knowledge of the time required for sailing vessels to make a voyage from one point to another?

A. Well, I think I have.

Q. From Cleveland to Escanaba?

A. Yes, sir; I have been in that trade a great deal.

Q. And Cleveland to Chicago, and Chicago to Buffalo?

A. I have been in that trade a good deal.

Q. And during all the time you have sailed, what knowledge have you had as to the general going rates of freights on grain and ore and coal and such things?

A. I keep it before my mind pretty vividly most of the time, but going back to those years I could not tell exactly.

Q. I want to know whether you have a general knowledge of the going rates of freights of vessels?

A. I think I have.

Q. Do you remember the season of '72 as to the general character of the season, and as to the demand for vessels, and as to the rate of freights?

A. Well, it was what we term a very good season.

Q. We will take the time, say from the 9th of August, '72, up to the 26th and 29th of September of the same year, what would be the
540 net value of the use of the S. S. Osborn per day during that time, assuming that she will carry 1,120 to 1,130 tons of ore, and amount 40,000 bushels of wheat or grain, taking things us they were during that time?

A. To get at that I should have to take the average of the freights, wouldn't I?

Q. You would have to form a judgment based upon that.

A. According to the statements I have seen, and what little knowledge I had of it, I suppose the rates of freight would average about $4.00 a ton between those dates. I am speaking more of ore because I was more in that trade than I was in the grain trade at that time. I think there would be no trouble in the vessel getting what those gentlemen swore to, from $200 to 220 a day with those freights.

Q. Well, give us your best judgment, taking things as they were at that time, and from all the information you have obtained in relation to it, what would you say would be the fair net value per day of the use of that vessel?

A. Well, I have just said it would range from $200 to $220 a day, with those rates of freights, taking them at $4.00 a ton, which seems to be the average.

Q. Do you remember how it was as to the extent of the demand for vessels that year, during August and September whether there was a full demand for them?

A. Well, I should suppose there was; yes, sir. In fact we were contracted for the season, and I don't pay as much attention to it as if we had been running wild, as we term it, picking up freights at the
541 ports each trip.

Q. You had a contract based upon the lower rates of the previous year?

A. Yes; we had a contract based on $3.50, I think, if I remember rightly.

Q. About what would be the difference in the net value per day between—about what would be the difference between the use of the Osborn carrying say 1,120 to 1,130 tons, and the use of the American Union carrying say, 840 and 850 tons during that time?

A. Well, you would have to figure that out; I could not tell exactly. I should suppose, if I was to guess at it, $75.00 a day, but it is easy to tell by figuring.

Q. It would be the difference of freight, the additional quantity?

A. Less the expense.

Q. About how much would be the difference of handling 75 or 80 tons?

A. Whatever there would be in the towage through the river St. Clair; also into the ports, the handling, going out and in; it would be the difference in the cost of handling. The running of the vessel, most of the time perhaps, would not vary any.

Q. About what would that be on 275 or 280 tons, say?

A. I should have to do some figuring before I could testify accurately about that. I should say, if I was going to suppose it, about $70.00.

Q. You estimate it at about $75.00 a day?

A. Yes, sir.

Q. (The MASTER.) What would such a vessel as the Osborn be worth, say in August and September, '72—what would the vessel have sold for at that time?

542 A. Well, that is a pretty hard question for me to answer. Vessels were pretty high at that time. I should say $50,000. I should suppose it could be sold for fifty thousand dollars at that time. I may be entirely wild on that.

Q. What do you say would be the average length of trip between Cleveland and Escanaba?

A. Well, 15 days we term as the average.

Q. From Cleveland to Chicago and back to Buffalo, how long?

A. Well, I should have to put that a little higher than those gentlemen who testified ahead of me; I should put it at 25 days.

Q. As the average trip?

A. Yes, sir; still I may be all wrong in that.

Q. Is there any especial advantage in freighting ore at that particular season over any other freight?

A. Not that I know of. I think the ore was at a disadvantage of the grain freights at that time.

Q. You could do better by running wild, carrying promiscuous freights, than you could carrying ore?

A. Oh, yes, sir. I owned an interest in the Bradley and the Quayle that the captain speaks of, she was chartered about that time; I think it was the 16th of September, if I remember rightly; she was chartered for three trips at $5.00 a ton—I have forgotten the number of trips—it was $5.00 a ton.

Q. (Mr. PRENTISS.) You have actual knowledge of the going rates of freights then?

A. I did so far as she was concerned; she got just the going rates.

543 EGBERT DE VILLE, called and sworn on behalf of the respondent, was examined by Mr. PRENTISS, and testified as follows:

Q. What is your business?

A. I have been sailing.

Q. How many years?

A. I have been sailing quite a good many years.

Q. From what ports?

A. All of the lakes.

Q. How many years?

A. I have been sailing ever since about '50, or more or less since.

Q. In what capacity?

A. Been in every capacity from cook up.

Q. Take it from '71 up to this time?

A. My business was ashore principally at that time. I have been in the vessel-agency business, ship broker and insurance, some.

Q. At what place?
A. Here in Cleveland.
Q. Procuring cargoes for vessels?
A. Yes, sir.
Q. Were you in that business in '72?
A. Yes, sir; a part of the year in ship brokerage and insurance.
Q. You may state what means you had of knowing in the course of your business as to the demand for vessels, the rates for freights, and earnings of vessels, the value of the use of vessels in 1872.
A. I know it was an exceptionally good season; it was extraordinary for that.
544 Q. Had you the means of knowing what the earnings of vessels were, and the value of the use of them, during that time?
A. Yes, sir.
Q. Do you know the American Union?
A. Yes, sir.
Q. Do you know the Osborn?
A. Yes, sir.
Q. What in your judgment was the net value of the use of the Osborn from August 9th, '72, up to the 26th and say the 29th of September, of the same year, taking into consideration the circumstances as they existed at that time?
A. Well, my opinion is she was worth $200 to $220 a day net—that sized vessel.
Q. What would be the difference in value of the use of the Osborn above that of the use of the American Union, estimating that from her increased size she would carry 275 tons more of ore, and a proportionate amount more of grain than the American Union?
A. I should think the difference in their profits would be the difference in what they would carry less the expense of handling the cargo, and the amount of the difference there would be in towing the vessel.
Q. What would be the difference in the extent of the towing and handling on account of the increased quantity?
A. I should think it would be somewhere in the neighborhood of seventy-five to eighty dollars.
Q. The amount she would be worth more per day could be got at by ascertaining——
A. How many day' she would be on a trip——
545 Q. How many days she would be earning that. Her use, you think, would be worth that much more?
A. Yes, sir; it would.
Q. What would be about the fair average rate of freight on ore from Escanaba to Cleveland during that time?
A. Well, I should think four dollars a ton would not be too much compared with what my recollection is of the grain freights.
Q. In September it was higher?
A. Yes, sir.
Q. Early in August a little lower?
A. A little lower in August.
Q. What would be the fair average length of a voyage between Cleveland and Escanaba, going up light and coming down with ore?
A. Well, I have kept a little tra'k of it and I find about 15 days is a fair average.
Q. Including the time for loading and unloading?
A. Yes, sir; making the entire trip.
Q. (The MASTER). In what does the bulk of the expense of operat.

ing a vessel of that kind consist; the handling, running expenses, handling cargoes?

A. Well, the handling of cargoes, wages and provisions. It depends a good deal upon how fast you would make your trips which would be the biggest.

Q. In making a trip from here to Escanaba say, and you carried 800 tons?

A. Do you want to know which would be the largest item of expense?

Q. Yes, which would be the largest item of expense?

A. No, the handling of the cargo would not be the largest item—it seems to me now from a rough estimate, I could not tell myself
546 without figuring it, but my ideas are at present that the biggest item would be the manning of the vessel.

Q. Making a rough calculation, according to your best judgment, say 800 tons at $5.00 a ton gross, the round trip, 15 days, would be $4,000, $266.00 gross a day. You would count the expense including the handling of the cargo at about $50.00 a day?

A. The whole expense of the vessel would be considerably more than that, the difference in the profits of the vessels—the American Union and the Osborn—if there was 300 tons difference in their carrying capacity—the expenses of the American Union was just the same as the Osborn's was with the exception of the difference in handling the ore, and the trifle difference there would be in the tug bills, and the balance would be the net profit of the Osborn over and above the American Union. The tug bills would not be over three hundred and sixty dollars to four hundred dollars from Cleveland to Escanaba, the way times were then.

Q. How many days of the 15 would be taken up in receiving and discharging the cargo?

A. It would depend upon whether the ore was all ready. If the ore was all ready——

Q. Taking the average.

A. Shippers in making the contract claim four days; three days for unloading, and one here to procure it. As a general rule they can load a vessel inside of a day when the ore is ready, and they are prepared to load the vessel when she came. The usual time for discharg-
547 ing a vessel would be two to three days; it would depend upon how the weather was. I think it would spoil three days, but you might call it four to five days.

Q. (Mr. PRENTISS.) Taking the average at both ends?

A. It would be from four to five days, loading and unloading.

Q. Making the average running time 10 to 11 days?

A. Yes, sir; the trips have been shortened up from what they used to be. To Chicago and back to Buffalo we used to call the average trip 25 days, but of late years the tugs have got to towing the vessels further, and that has shortened the trips a little. I think 22 days would be a fair average now.

Q. (The MASTER.) Do you agree with Captain Stone as to what the Osborn would have sold for in '72?

A. My impression is she was an A 2 vessel, and if she was she would sell for $55,000 (one of the witnesses remarks that the Osborn was an A 1). Then there was no question of her being worth $55,000 the way vessel property was selling at that time.

Adjourned to to-morrow at 10 o'clock.

D. L. PENNINGTON, being duly sworn, testified as follows:

Q. (By Mr. L. PRENTISS.) What is your age and business?

A. Age, forty-one; business, vessel-owner and ship-broker.

Q. How long have you been engaged in the business of owning ships and vessels, and in the ship-broker business?

A. Since 1865.

Q. During all that time?

548 A. With the exception of one year.

Q. What year was that?

A. That, I believe, was in 1870.

Q. Did you reside at Cleveland during all that time?

A. Yes, sir.

Q. You may state what knowledge you have had in relation to the vessel business, the length of voyages required between different points, the rates of freight, the expenses of running and the earnings of vessels and the value of their use during that time.

A. Have had such experience during that time with vessels I have owned and with other vessels for which I have figured that I am probably qualified to tell something about it.

Q. Are you acquainted with the length of voyages required between Cleveland and Escanaba for the ore trade?

A. Yes, sir.

Q. And were you acquainted with the demands for vessels and the rates of freight and earnings of vessels in the months of August and September, '72?

A. Yes, sir.

Q. Are you acquainted with the S. S. Osborn and the American Union?

A. Yes, sir.

Q. Supposing that the Osborn had capacity for carrying from one thousand one hundred and twenty to 1,130 tons of ore, what would have been the average net value of her use per day from August 9th, 1872, to the 27th of September, 1872, in your opinion?

A. From $220 to $225 a day.

549 Q. Suppose that the Osborn would carry from 270 to 280 tons more of iron ore than the American Union, what would be the difference in the net value of the use of the two vessels per day during that time?

A. I regard the difference about from $50 to $60 per day.

Q. That is, that the Osborn would earn that much more?

A. Yes, sir.

Q. How would you ascertain the difference?

A. The difference would have to be ascertained by figures as to the gross earnings at the prevailing rates at that time and the expenses.

Q. What would be the difference in expense between carrying 850 tons and 1,120 or 1,130 tons for a voyage—for a cargo, say?

A. There would be no difference in seamen's wages; there would be a difference in handling the extra cargo that the Osborn carried over the Union. There would be about $40 difference, I take it, in towing through the river each way, the Osborn being the larger vessel, and probably $20 in harbor towing, amounting to $100, probably.

Q. That is, the expense would be that much more, in your judgment?

A. The expense would be that much more.

Q. And that expense would consist of what?

A. The extra handling of cargo, river and harbor towing.

Q. Then the freight on that increased amount, less this expense, would be the difference in the value of the use of the vessel per day, taking the length of time the voyage would require?

A. Yes, sir.

Q. (By the MASTER.) Were you acquainted with the rates of
550 freight on ore from Escanaba to Cleveland during that time?

A. Yes, sir.

Q. What were those rates?

A. Well, the rates of freight during that year gradually advanced from the beginning of the season to its close. The rates of freight at the beginning of August from Escanaba to Cleveland were about $3.00, and at the close of September——

Q. Well, say fore part of September, if you please.

A. In the fore part of September, about $4.00 or $4.25.

Q. And the middle, say?

A. Middle of September, perhaps $4.75.

Q. How was it the latter part of August?

A. The latter part of August or first of September, about $4.00.

Q. Is your estimate of the net average value per day based on the idea that the schooner would have a contract, or that she was running wild?

A. That she was running wild.

Q. You think there would be no trouble, then, from August 9th to September 26th, for a schooner of her capacity, running wild, to have earned on an average the sum you name a day?

A. You refer to the Osborn?

Q. Yes; that vessel.

A. No, sir; the freights were high and very active—a great demand for vessels.

Q. There was a great demand for vessels, you say?

A. Yes, sir.

Q. Do you know the schooner Osborn?

551 A. Yes; I knew her.

Q. What do you say she would have sold for about August or September, 1872?

A. Well, I don't know.

Q. I do not ask you what she was worth, but what would she have brought at that time, considering the great demand for vessels, the rates of freight, and any other advantages or disadvantages that there were at that season?

A. I would rather not answer that question.

Q. If you do not consider yourself competent, say so.

A. I should have to think that up a little before I could give an intelligent answer.

Q. (By Mr. PRENTISS.) How many trips would a vessel be able to make, in the time mentioned, between Cleveland or Escanaba, running up light and coming down with ore?

A. I should think she would easily make three trips. They usually count on from 13 to 16 days for a trip; perhaps average fifteen.

552 In the circuit court United States, &c.

WM. G. WINSLOW ET AL.
vs.
SCHOONER S. S. OSBORN ET AL. } Appeal in admiralty.

Testimony taken before Special Commissioner A. J. Ricks, under reference to report damages, &c.

Proctors for both parties appeared before the undersigned as master, and the following testimony was taken:

Proctor for libellant offered in evidence the charter of the schooner Osborn for season of 1872, to which proctor for claimant objected. The charter is filed by master herewith as evidence, and objection of claimant overruled.

Proctor for libellant introduced as evidence the master's report made and filed in the district court.

It was agreed by the proctors for both parties that the American Union was under charter for the season of 1872 to carry iron ore from Escanaba, Mich., to Erie, Pa., at $2.20 per ton, and from Escanaba to Cleveland, Ohio, at $2 per ton, and that said charter was made in the fall of 1871. It was also admitted that the said American Union's carrying capacity was 900 tons of iron ore, and that of the Osborn was 1,100 tons.

553 It was further agreed that the master in the district court, if sworn, would state the facts as to the admissions of the owner of the Osborn as to the damages sustained by the American Union, the same as set forth in said master's report.

BLISS O. WILCOX, the owner of the schooner Osborne, heretofore sworn and examined, testified further as follows:

The wages of the first and second mate of the schooner Osborne, during the summer of 1872, were as follows:

Wages of 1st mate, $80 per month.

Wages of 2nd mate, 62½ per month.

During August and September of that year, the wages of common seamen were at rate of $2 per day.

According to her charter with the Cleveland Iron Mining Company the Osborn was to have $2.20 per ton for iron ore carried from Escanaba, Mich., to Erie, Pa., and at rate of $2 per ton on ore from Escanaba to Cleveland, Ohio.

As to what I admitted before the special master in the district court as to the demurrage to be allowed the American Union during the time she was detained for repairs, I have this to say:

It was claimed by Mr. Terrell, her proctor, that she was detained twenty-three days undergoing repairs on account of injuries received in this collision, and in answer I told him that it was not right that the Osborne should stand damages for all that time, because during that time the stern of the Union was being repaired on account of another collision. He claimed 21 days' delay here and 2 days at
554 the other end, making twenty-three in all.

I have no personal knowledge of the time the American Union was delayed.

I admitted the amount of the demurrage there found by the commissioner because my counsel told me there would be a new hearing as to

the damages in the circuit court, and I consented to those amounts to save expense.

Cross-examined by libellant's proctor:

All the bills for repairs for the American Union were there at the time of the agreement, and I looked over several bills and some were thrown out. I think I looked over all the bills. I threw out quite a number of bills; some of them because I knew Captain Parsons could not come to prove them. I do not object now because I know they cannot be proved, but because I know they were not just.

I presume I examined the Stevens and Priestly bill. I objected to some item on that bill, and it was thrown out. I think the expenses of an ordinary trip of the Union was ascertained from her books, which were produced at the office of Mr. Terrell. I might have made some of the estimates as to demurrage. I don't swear I did or didn't. Captain Post made most of the estimates for me, and acted at my request. He was pretty well informed as to such matters, and went with me to Terrell's office. He made most of the estimates that were not made from the Union's books. We went over it pretty fully. The
555 charter of the Union was not at Mr. Terrell's office. You (Mr. Terrell) had some figures there that you got at the office of the company where Union was chartered.

I know that Mr. Terrell then said that the Union was under charter. I will not say the statement now produced is the same statement or not.

(By Mr. PRENTISS.) I had no personal knowledge of the items set up in the bills. I took them as they were set out in the several bills. I was repairing the Osborn at the same time the Union was being repaired, and I know she was there, but I did not observe the exact time.

Examination of BLISS O. WILCOX resumed:

The Osborn, during the season of 1872, up to the time of the collision, made six trips; one trip to Cleveland, five to Erie, and on the last trip at the time of the collision was bound for Erie.

I made a verbal arrangement with Mr. Miller, the broker with whom I made the contract, that I was to make one-half the trips to Erie and one-half to Cleveland under that charter. They compelled me to go to Erie more than Cleveland. Every trip I made my cargo was from 100 to 175 tons short of the capacity of the vessel, and on the last trip I had to lay at Escanaba ten or eleven days for my cargo. There was several days delay the trip before, and there were delays every trip. I complained of these matters to the Cleveland Iron Mining Company, and told them if they did not furnish me full cargoes and give
556 me better dispatch and let me come to Cleveland I would throw up the charter. They did not comply with my request. The next trip they ordered her to Erie, and the load was short, and there was delay in loading. I took the right to disregard the charter at the next load, and did so.

After the vessel was repaired I took a load of coal and iron to Milwaukee, and from Milwaukee to Buffalo a load of grain, and the Iron Mining Company made no objections. They made no requirement to fulfill the contract or made no claim for damages. The Osborn made one ore trip under her said charter after the collision, and after the Milwaukee trip, and she left Escanaba on the 26th October, arrived at Erie on 8th November, and finished unloading on 11th or 12th of Nov., 1872.

LYDIA WILCOX, being sworn, says:

I was on the Osborn the last trip she made from Cleveland to Escanaba and back, and know that she was delayed in taking her cargo from 1 p. m., July 30th to August 9th at 6 a. m. The cause of delay was fault of the mining company in not furnishing us a load. Her cargo on that trip was over 100 tons short of a full load. They could not furnish the full load without a further delay of 24 hours, to which Capt. Wilcox objected, and proceeded on his trip.

557 Captain JOHN E. POST, being sworn, says:

I have been a master six years, and I know the Osborn. I was present at Mr. Terrell's office at the time of a conversation between him and Capt. Wilcox as to the damages to be reported by the master in the district court in this case.

Twenty-one days' delay at Cleveland and two days at Escanaba was the time agreed upon as the delay of the American Union for the purpose of that hearing. I was acting for Mr. Wilcox in that matter, and I had no personal knowledge of the delay except what Mr. Terrell said. He made about all the figuring. There was some dispute between them as to the demurrage, and it was left to me. I made a calculation and proposed $1,500 as the sum. Mr. Terrell claimed $1,750. It was finally agreed it should be $1,600.

Mr. Wilcox said he did not care so much about the sum to be reported, as he intended to appeal the case.

558 *Charter.*

This article of agreement between B. O. Wilcox, of Painesville, Ohio, as owner of the following vessel, viz, the schooner S. S. Osborn, and the Cleveland Iron Mining Co., made this 18th day of Nov., 1871, witnesseth:

That the said B. O. Wilcox, for the consideration hereinafter mentioned, agree to transport iron ore with said vessel from Escanaba, Michigan, to Cleveland, Ohio, or Erie, Pennsylvania, commencing on the opening of lake navigation in 1872 and continuing the trips, without intermission, until the contract is fulfilled, it being understood and agreed that the said vessel shall not be required to leave for a cargo of ore a later date than November 10th.

The freight shall be at the rate of two (2) dollars per gross ton (of 2,240 lbs.) when delivered at Cleveland, and (2) two and $\frac{20}{100}$ dollars per gross ton when delivered at Erie.

In consideration of the irregularities in length of trips of vessels, the said Cleveland Iron Mining Co. shall be allowed an average on each cargo of three (3) days' time for loading vessels at Escanaba and of one day to furnish docks for unloading vessels at Cleveland and Erie, time at Escanaba to be rec'oned from the hour when vessels report and are ready to load until loaded; at Cleveland and Erie from the hour when vessels report ready to unload until dock room is furnished; Sundays,
559 public holidays, and time lost in consequence of heavy sea or storms or other causes beyond control of said Cleveland Iron Mining Co. not to be counted. Time of reporting vessels ready to load or to unload not to date from an hour earlier than eight o'clock a. m. nor later than 5 p. m.

If, when all the cargoes herein contracted for are transported and delivered, it is found that the average time of detention exceeds the average of four days for each trip, as above stipulated for, the said Cleveland

Iron Mining Co. shall pay to the said B. O. Wilcox demurrage at the rate of seven cents per gross ton on one average cargo for each day (of 24 hours) of such excess.

A special order for each cargo shall be obtained at the office of the said Cleveland Iron Mining Co. at Cleveland.

In witness whereof the said parties have hereunto set their hands the day and year first above written.

B. O. WILCOX.
CLEVELAND IRON MINING CO.,
Per FRED. A. MORSE, *Sec'y.*

[Stamp.]

And afterwards, at the said January term, A. D. 1879, viz, on the 15th day of March, the following decree was entered:

560 *Final Decree.*

W. G. WINSLOW ET AL.
vs.
THE S. S. OSBORN, BLISS O. WILCOX, CLAIMANT and cross-libellant. } Appeal.

This cause came on to be heard before the honorable John Baxter, circuit judge, upon the report of the master and the testimony taken before him, and the exceptions of the claimant and cross-libellant to said report, which was argued by counsel, and, upon consideration thereof, it is ordered, adjudged, and decreed that said exceptions be, and the same are hereby, overruled, and said report be, and the same is hereby, in all things confirmed and the court find that there is due the said Bliss O. Wilcox upon his said cross-libel the sum of $4,965\frac{12}{100}$, with interest from the 7th day of January, 1879, aggregating at the date of this decree the sum of $5,021.84, being the balance due to him upon a division of the damages, as heretofore ordered in this case, and that said Wilcox also recover one-half the costs of this suit, to be taxed, the whole costs being taxed at $, and that said libellants recover one-half of the said costs.

And it appearing to the court that after the seizure of the said schooner American Union upon said cross-libel, Wm. G. Winslow and Hezikiah J. Winslow, as principals, and Rufus K. Winslow and
561 B. L. Pennington, as sureties, executed and delivered to the said Bliss O. Wilcox, cross-libellant in that cause, their bond in the penal sum of thirty-three thousand eight hundred and eighty-eight and $\frac{12}{100}$ dollars, to abide by and answer to the decree in this cause under said cross-libel, in the district court or any appellate court *and* which this cause might be appealed, and that said bond was in due form of law, and that upon the delivery of said bond the marshal released said schooner American Union.

It is therefore ordered and decreed that the said Wm. G. Winslow, Hezekiah J. Winslow, Rufus K. Winslow, and B. L. Pennington pay to the said Bliss O. Wilcox the said sum of four thousand nine hundred and sixty-four and $\frac{12}{100}$ dollars, with interest thereon from the 7th day of January, 1879, aggregating at the date of this decree the sum of $5,021.84, within ten days from the entering of this decree, together with one-half of the said costs, and in default thereof that execution issue to collect the same.

And it is further ordered that the said Bliss O. Wilcox pay to the

clerk one-half of said costs within ten days, and in default thereof that execution issue to collect the same.

The libellants in open court, claim and appeal from the foregoing decree to the Supreme Court of the United States, which is allowed, and the amount of the bond to be given upon said appeal is fixed $10,000.00;

and said Bliss O. Wilcox also claims, in open court, an appeal
562 from the foregoing decree to the Supreme Court, which appeal is allowed, and the court fix the bail to be given by him upon such appeal at the sum of $10,000.00.

563 *Copy.*

Know all men by these presents that we, William G. Winslow and Hezekiah J. Winslow, as principals, and Rufus K. Winslow and B. L. Pennington, as sureties, are held and firmly bound unto Bliss O. Wilcox in the sum of ten thousand dollars, to the payment whereof well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this 21st day of March, in the year of our Lord one thousand eight hundred and seventy-nine.

Whereas the above-bounden William G. Winslow and Hezekiah J. Winslow has appealed to the next Supreme Court of the United States from a decree of the circuit court of the United States for the northern district of Ohio, bearing date the 15th day of March, A. D. 1879, in a cause wherein the said William G. Winslow and Hezekiah J. Winslow were libellants, and the said Bliss O. Wilcox and the schooner S. S. Osborn were respondents:

Now, therefore, the condition of this obligation is such that if the above-named appellants, William G. Winslow and Hezekiah J. Winslow, shall prosecute their appeal with effect, and pay all such damages, costs, and expenses as shall be awarded against them as such appellents therein, then this obligation to be void; otherwise to remain in full force and effect.

WILLIAM G. WINSLOW,
HEZEKIAH J. WINSLOW,
By H. L. TERRELL,
Att'y in Fact.
RUFUS K. WINSLOW. [SEAL.]
B. L. PENNINTON. [SEAL.]

Sealed and delivered in presence of—

(Indorsed:) No. 3600. In the circuit court of the United States for the northern district of Ohio. Wm. G. Winslow et al. vs. S. S. Osborn et al. Appeal bond. Approved and filed March 21st, 1879. M. Welker, judge.

564 *Copy.*

Know all men by these presents, that we, Bliss O. Wilcox, as principal, and J. S. Casement, as surety, are held and firmly bound unto William G. Winslow and Hezekiah J. Winslow, Rufus K. Winslow and B. L. Pennington, in the sum of one thousand dollars, to the payment whereof well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this 8th day of May, in the year of our Lord one thousand eight hundred and seventy-nine.

Whereas the above-bounden Bliss O. Wilcox has appealed to the next Supreme Court of the United States from a decree of the circuit court of the United States for the northern district of Ohio, bearing date the 15th day of March, A. D. 1879, in a cause wherein the said Wm. G. Winslow and Hezekiah J. Winslow were libellants and appellees and claimants, respondent to the cross-libel of said Bliss O. Wilcox and appellees, and the said schooner S. S. Osborn and Bliss O. Wilcox, respondent and cross-libellant, were appellants, respondents:

Now, therefore, the condition of this obligation is such that if the above-named appellant, Bliss O. Wilcox, shall prosecute his appeal with effect, and pay all such damages, costs, and expenses as shall be awarded against him as such appellant therein, then this obligation to be void; otherwise to remain in full force and effect.

B. O. WILCOX. [SEAL.]
J. S. CASEMENT. [SEAL.]

Sealed and delivered in presence of—
A. L. TINKER.
J. P. AXTELL.

(Indorsed:) No. 3600. In the circuit court of the United States for the northern district of Ohio. William G. Winslow et al. vs. Sch'r S. S. Osborn. Appeal bond. Approved and filed May 8th, 1879. M. Welker, dist. judge.

565 THE UNITED STATES OF AMERICA,
Northern District of Ohio, Eastern Division, ss:

I, Augustus J. Ricks, clerk of the circuit court of the United States for said district, do hereby certify the above and foregoing to be a true, correct and complete transcript of the record of all the proceedings had in said court in the cause wherein William G. Winslow and Hezekiah J. Winslow, as owners of the schooner American Union, are libellants and appellents, and Bliss O. Wilcox, claimant and owner of the schooner S. S. Osborne, is cross-libellant and appellant, as the same appears from the files and records of said court now remaining in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Cleveland, in said district, this 15th day of July, A. D. 1879, and in the one hundred and fourth year of the Independence of the United States of America.

[SEAL.] AUGUSTUS J. RICKS, *Clerk.*

566 Supreme Court of the United States.

WILLIAM G. WINSLOW & HEZEKIAH J. Winslow *vs.* THE SCH'R S. S. OSBORN, AND BLISS O. WILCOX *vs.* THE SCH'R AMERICAN UNION.	In admiralty. Libel and cross-libel.

To the honorable the Supreme Court of the United States:

The appeal of William G. Winslow and Hezekiah J. Winslow, the above-named libellants in the original libel, claimants in the cross-libel

and appellants, respectfully showeth that on the day of August, A. D. 1872, these appellants filed their libel in the district court of the United States for the northern district of Ohio against the schooner S. S. Osborne, her tackle, apparel, &c., in a cause, civil and maritime, for the recovery of damages alleged to have been sustained by them to the schooner American Union by collision with the said schooner S. S. Osborne in Lake Michigan, and that said schooner S. S. Osborne was arrested upon said libel, and was discharged on said Bliss O. Wilcox filing his claim and entering into stipulations; and said Bliss O. Wilcox thereupon filed his answer to said libel, and also his cross-libel against the said schooner American Union, to recover damages sustained by him in said collision, upon process issued upon which cross-libel said schooner American Union was arrested, and was discharged upon these appellants filing their claim and stipulations; that thereupon these appellants filed their answer to said cross-libel, and
567 such proceedings were had in said cause that on the 26th day of December, 1876, a final decree was made and pronounced therein by the said district court, wherein it was in substance adjudged that these appellants recover against the said schooner S. S. Osborne, her tackle, apparel, &c., the sum of four thousand and thirty dollars, and that said cross-libel be dismissed.

And that, after such final decree, the said Bliss O. Wilcox, claimant of said schooner S. S. Osborne, attempted to appeal therefrom to the circuit court of the United States for the northern district of Ohio, and the said causes were thereby attempted to be removed into the said circuit court. A motion was duly filed in said circuit court by these appellants to dismiss said pretended appeal, which motion was granted by the court; but subsequently said court ordered said entry stricken out, and entered an order that said motion to dismiss be overruled; and said causes thereupon were, in fact, tried anew. And such proceedings were had in the said circuit court that afterwards, on the 24th day of Sept., A. D. 1878, the said circuit court made a decree in said cause, whereby it was decreed that the said final decree *or* the district court be reversed, with costs, and it was found that both said colliding vessels were in fault; and it was thereupon adjudged that the damages arising from said collision be divided. And thereupon, after the ascertainment and division of damages, it was, on the 15 day of March, 1879, adjudged by said circuit court that said Bliss O. Wilcox recover *s*gainst said schooner American Union the sum of five thousand twenty-one & $\frac{84}{100}$ dollars, and that said Wilcox have execution, and that the stipulators for these appellants cause their stipulations to be fulfilled, which said decree of the said circuit court is, as these appellants are advised, erroneous, and ought to be reversed.

Whereupon these appellants appeal fro*p* said order or decree of said circuit court overruling their motion to dismiss said pretended
568 appeal, and from the whole of said decree, as far as it finds said schooner American Union in fault for said collision, and as far as it adjudges against these appellants a division of damages, and respectfully pray that the decree of the said circuit court, and the libels, answers, pleadings, depositions, evidence, bill of exceptions, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, if necessary to hear the same beyond determining the question of the jurisdiction of said circuit court, and that the said decree of the circuit court, as far as it finds any fault against said schooner American Union and decrees a division

of damages, and adjudges that said Bliss O. Wilcox recover anything against said schooner American Union, or the appellants, may be reversed, and a decree made dismissing said cross-libel with costs, and adjudging that these appellants recover their damages aforesaid against said schooner S. S. Osborne, her claimant and stipulators, or such other decree as to the said Supreme Court may seem just.

WILLIAM G. WINSLOW, &
HEZEKIAH J. WINSLOW.

Cleveland, Ohio, March 21st, 1879.

H. L. TERRELL,
Proctor for Appellants.

(Indorsed:) Supreme Court of the United States. William G. Winslow & Hezekiah J. Winslow vs. Sch'r S. S. Osborne, and Bliss O. Wilcox vs. Sch'r American Union. Appeal. Filed March 21, 1879. H. L. Terrell, proctor for appellants.

(Indorsement on cover:) No. 243. William G. Winslow and Hezekiah J. Winslow, appellants, vs. Bliss O. Wilcox, owner and claimant of the schooner S. S. Osborne. N. Ohio C. C. U. S. Filed 13th September, 1879.

In the Supreme Court

OF THE UNITED STATES.

NO. 243.

WILLIAM G. WINSLOW, ET AL.,

VS.

BLISS O. WILCOX, OWNER, &C.

Appeal in Admiralty.

BRIEF FOR APPELLANTS.

H. L. TERRELL,

Proctor for W. G. Winslow, et al., Appellants.

John A. Davies, Book and Job Printer, 31 Public Square.

In the Supreme Court

OF THE UNITED STATES.

NO. 243.

WILLIAM G. WINSLOW, ET AL.
VS.
BLISS O. WILCOX, OWNER, &C.
} APPEAL IN ADMIRALTY.

BRIEF FOR APPELLANTS.

The merits of cases in Admiralty being no longer the subject of consideration by this Court, the only question of error for determination is that raised by the Bill of Exceptions herein.

The facts upon which the question arises are confined to narrow limits, and may be briefly stated.

STATEMENT OF FACTS.

(1.) The final decree in this cause in the *District Court* was rendered on the *26th day of December*, 1877.

(2.) The 23d Rule in Admiralty of the District Court relating to appeals in Admiralty in force at that time provided as follows: (See Exhibit "A" to Bill of Exceptions, Rec. pp. 213-214.)

"Appeals in Admiralty to the Circuit Court *shall be* " *taken within ten days from the date of the decrees unless* " *further time be given by special order of the judge. The* " *appeal shall be in writing, and shall specify particu-* " *larly from what part of the decree, if less than the whole,* " *the appeal is taken; also whether it is intended to make* " *new allegations or proofs, and, if so, what; and whether* " *it is intended to pray for any other relief, and, if so,* " *what; and on the trial above the appellant shall be* " *strictly confined to the specifications in his appeal.* * *

" *The appeal shall be filed with the Clerk of the Dis-* " *trict Court, and from that time, security having been* " *given, it shall be considered as perfected.*" * * * *

(3.) By special order of the Court the time for taking an appeal from the final decree of the District Court was extended to include twenty days from the date of said decree, and expired on the 15th day of January, 1878. (See decree of District Court, Rec. p. 180.)

(4.) No "appeal in writing" was filed in the District Court on or before January 15th, 1878, as required by the Rule of Court, nor was any such appeal ever filed in said District Court, nor any attempt made in that direction. On February 27th, 1878, such a writing was filed in the Circuit Court. This was forty-two days after the expiration of the time for perfecting the appeal in the District Court. (See Bill of Exceptions, Rec. p. 213.)

Upon this state of facts it is believed that the Circuit Court never obtained jurisdiction of the case, and that its decree is *coram non*.

It is submitted

1st. That in respect to appeals in Admiralty from the District to the Circuit Courts of the United States, the Acts of Congress make no provision as to the time in which such appeals are to be taken, or as to the mode in which they are to be perfected.

Section 631 of the Revised Statutes has re-enacted, in substance, the provisions of the original statutes on the subject of appeals from the District Court, and provides simply that they shall be taken to the next term of the Circuit Court.

2d. That Congress having made no provision as to the time or mode of appeal from the District to the Circuit Court, the District Court, under express authority conferred by the Practice Acts of 1789, 1792, 1793 and 1842, has full power and authority, by general rule, or by special order in the particular case, to prescribe the time and mode for perfecting appeals from the District to the Circuit Court in Admiralty, and such rule or order is as binding as a statute.

Rule 45 of the Supreme Court of the United States in Admiralty expressly recognizes this doctrine and gives its authority to its enforcement.

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Rule 45 of the Supreme Court of the United States in Admiralty expressly recognizes this doctrine and gives its authority to its enforcement.

The following authorities are decisive upon this question:

3 Mason, 443; 3 Sumner, 495; 1 Black, 522; 1 Abbot's Admiralty, 422; 8 Peters, 262; 12 Peters, 472; 9 Peters, 329; 14 Peters 448.

The above adjudications as to the effect of rules of court were made before the re enactment of the statutes contained in the Revised Statutes of the United States; and upon familiar principles, in re-enacting in the Revised Statutes, the provisions of the law in respect to appeals as they stood in the original statutes, the construction given those statutes by such adjudications was thereby adopted.

3d. The rule of the District Court having the force of a statute, its requirements as to the time and mode in which an appeal from its decree in Admiralty must be taken and perfected, are jurisdictional and imperative. Upon this subject a liberal quotation from two authorities will illustrate the state of the law as we understand it:

Norton vs. Rich, 3 Mason 443:

"The judiciary act of 1789, ch. 20, has expressly prescribed a period of five years, within which appeals may be made from the decrees of the Circuit Court to the Supreme Court, and the mode in which it is to be done, by a citation to the adverse party, &c., &c. But it has provided no mode as to appeals from the decrees of the District Courts to the Circuit Courts, confining the appeal only to the *next* Circuit Court. This omission seems to indicate a difference of intention in Congress as to appeals

from the Circuit and District Courts, leaving appeals from the latter to be regulated by the discretion of the Court, or to be made only at the time of the decree. The case, therefore, being untouched by statute, must be decided upon general principles. The acts of 1792, ch. 36, and 1793, ch. 22, have given to all the courts of the United States authority to make such regulations for their practice and business, as they may deem expedient; and doubtless under these acts, as appeals from the District Courts are unprovided for by statute, these courts may by rule prescribe the times and modes of making them. They may require appeals to be made in open court before an adjournment *sine die*, or afterwards, within a fixed time, in the clerk's office. It would be unreasonable to suspend the execution of a decree during a whole vacation; and after execution once authorized and carried into effect, it would be inconvenient to allow appeals to the Circuit Court.

"In this district no regulations as to appeals have ever been made by the District Court. The uniform course, from the earliest period, has been to make the appeal in open court, *apud acta*, before the adjournment of the court. This course of practice is equivolent to a rule of the court; and must be considered as directory to all parties. Wherever a desire for further time to consider of an appeal has been asked for, it has been rapidly acceded to by an adjournment of the Court for this purpose.

"If I were to grant the petition in this case, it would be assuming the right to regulate the proceedings of the District Court in a matter plainly within its general jurisdic-

tion and authority. The decision of the District Judge is in conformity to the general practice. No evil has hitherto grown out of it; and I do not feel myself at liberty to disturb it. If any inconvenience should arise, it can easily be obviated by a special application to, or a general rule of, the District Court."

Steamboat New England, 3 Sumner, 495:

"By the act of 1789, ch. 20, sec. 21, an appeal is allowed from final decrees of the District Court in causes of admiralty and maritime jurisdiction, where the matter in dispute exceeds the sum or value of three hundred dollars (since that time altered to fifty dollars), exclusive of costs; but the appeal is allowed only to the next Circuit Court to be held in the district. In what mode and at what time the appeal is to be made, is not pointed out by the statute. By the civil law, and also by the general practice of the Admiralty Courts of England, the appeal may be made *viva voce* in open Court, or in writing *apud acta* at the time of the pronouncing the decree, or within ten days afterwards in writing before a notary, who authenticates the instrument of appeal. In America, this practice has not to my knowledge ever been adopted. The uniform course, as far as I know, has been to interpose the appeal during the term or sitting of the District Court, at which the decree passed, and before its final adjournment, or to interpose it within some stipulated period after the term or sitting, fixed by the general rules of the Court, or specially prescribed and allowed by the Court in the particular case, upon the motion of the party aggrieved. And in each of these cases, if the appeal is taken within the

prescribed period, it is entered upon the record of the proceedings, *apud acta*, by the clerk of the Court; and when entered, it takes effect in the same manner by relation back, as if entered in open Court upon the record, when the sentence was pronounced. If no appeal is taken in either of these ways within the proper period, and the District Court is adjourned without day, then it is understood, that the party waives any appeal, and the Court proceeds to execute its decree; and no appeal subsequently taken by the party, even if offered or entered before the next term of the Circuit Court, is understood to possess any validity; but it is treated as a mere nullity. Such, at least, has been the invariable practice in this circuit; and it was fully recognized and enforced in the case of *Norton* v. *Rich* (3 Mason R. 443). And it appears to me, that the practice is settled upon true principles; for, otherwise, the execution of the decree of the District Court would be suspended until after the next Circuit Court, or the objects of the appeal might be in a great measure defeated by the total or partial execution of it. Be this as it may, I have no doubt whatsoever of the authority of the District Court to prescribe by its rules the term wherein appeals shall be entered, and that the parties would be bound by the limitation prescribed by those rules."

It is worthy of remark that these two decisions were made by Judge Story, who is accredited with the authorship of the rules of the Supreme Court in Admiralty substantially as they now stand, and whose opinions upon such questions have always been regarded as authoritative.

That regulations of statute, or of rules which have the force of statute, prescribing the time and mode in which appeals may be taken are jurisdictional, we regard as so well settled as not to need extended argument or the citation of numerous authorities. Under no system of procedure that we have any knowledge of, have such regulations ever been held to be anything else than jurisdictional; and that a decree of a court of competent jurisdiction can be disturbed or reversed in any other mode or way than that pointed out by statute, or a rule having the force of statute, seems to be too absurd a proposition for discussion.

Now, it is conceded that the plain and imperative requirements of the rule of the District Court in respect to appeals, and upon the fulfillment of which alone its decrees are permitted to be disturbed, have in this case not been complied with. The rule referred to requires two things to be done in order to perfect an appeal: First, the filing with the Clerk of the District Court of an appeal in writing therein particularly described, and, second, the giving of security, and it provides as to the time when the appeal shall be considered as perfected the following plain and explicit statement: The appeal shall be filed with the Clerk of the District Court and from that time, security having been given, it shall be considered as perfected."

By this clause the filing of the required appeal in writing is made the main, substantive and important jurisdictional act in the perfection of an appeal, and the rule in a former clause sets forth the time in which it must be done.

To hold that an appeal can be perfected without the filing of such appeal in writing is to hold that the rule has no force or effect; because the rule gives emphasis to the fact that it is only from the time of the filing of such an appeal in writing that the appeal can be considered as perfected.

Anticipating now the points made by opposing counsel in the argument upon this question in the court below we have the following suggestions to make in respect to their claims and the authorities upon which they rely.

I. Their first proposition was as follows: That they have the whole of the next term of the Circuit Court in which to perfect their appeal.

The two authorities referred to by them in support of this proposition, viz.: 3 Peters, 68; 2 Black, 721-2, have no possible application to the case at bar.

3 Peters, 68, holds that where the Supreme Court rules provide that parties litigant in that court shall file a transcript of proceedings therein within a certain time, and where also the established practice of the Supreme Court under such rule is to allow appellants to lodge a transcript of the record at any time during the term with a motion to re-instate, the court would not allow the clerk to issue an official certificate of dismissal before the close of the term, because that would be to prejudge the motion to re-instate.

It will be seen, therefore, 1st: That the court does not intimate an opinion as to whether failure to file transcript

within the rule is fatal, and 2d, that the court merely holds that in advance of the hearing of the motion to reinstate filed under and authorized by the established practice of the court in such cases the court will not prejudge such motion by ordering the clerk to issue a certificate of dismissal.

In addition it is perfectly apparent, of course, that the appeal having been perfected to that term of the court, the rule of the Supreme Court prescribing within what days of the term the transcript shall be filed for its convenience is not *jurisdictional*, whereas provisions for filing and perfecting appeals are always jurisdictional, since the vested rights accruing under judgment of the lower court can only be interfered with in the manner prescribed.

The case in 2 Black, 721-2, holds that where the Act of Congress provides that in addition to perfecting the appeal the transcript itself must be filed at the next term of the court, the omission to file the transcript at such term is fatal.

II. It was said by opposing counsel that a rule of court may be waived or controlled by the court.

In its broadest sense this is not true; stated as follows, it is true, viz.: A rule of court *not jurisdictional* may be waived or controlled by the court.

The courts of the United States being courts of limited jurisdiction, neither the court nor the parties can waive a jurisdictional matter.

That consent of parties will not waive jurisdictional fact—see:

19 How., 393.	4 Wash. C. C., 482.
4 McLean, 1.	2 Cranch, 126.
12 Peters, 657.	19 How., 271.

That the court itself cannot waive a jurisdictional fact—see:

21 How., 85.
" " 386.
" " 389.

That it is never too late to raise the question of jurisdiction, see:

6 Call, 245.

Now as to the authorities cited by the counsel for the claimant we submit as follows:

The case in 3 Woodbury & Minot, 359, holds that a rule of the court as to the time within which a plea shall be filed is within the control of the court.

This of course is readily admitted, since it is a rule of convenience merely and is in nowise jurisdictional. The court having acquired jurisdiction of the case it is folly, of course, to liken a rule in respect to the filing of pleadings therein, which has no earthly relation to jurisdiction, to a rule fixing the time and mode of appeal as authorized by Act of Congress which is purely jurisdictional.

The case in 5 Wall., 822, at first glance is more serious; however, its antagonism to the grounds we maintain in the case at bar is rather apparent than real.

1. The case in 5 Wall., 822, is an *equity* case, and is an appeal from the Circuit to the Supreme Court.

2. The Acts of Congress in respect to appeals in equity are essentially different in their requirements from the acts in respect to appeals *in admiralty* from the District to the Circuit Courts.

The Act of Congress in force at the time of the appeal of the case in 5 Wall., in respect to appeals in equity from the Circuit to the Supreme Court, provided as follows:

"And such appeals shall be subject to the same rules, "regulations and restrictions as are prescribed in law in "case of writs of error."

Referring now to the Acts of Congress then in force in respect to the regulation in relation to writs of error in cases at law, we find the provision to have been as follows:

"Final decrees and judgments in civil actions in a Dis- "trict Court, where the matter in dispute exceeds the sum "of fifty dollars, exclusive of costs, may be re-examined "and reversed or affirmed in a Circuit Court, holden in the "same district, upon a writ of error; *whereto shall be an- "nexed and returned therewith at the day and place there- "in mentioned, an authenticated transcript of the record, "an assignment of errors and prayer for reversal, with a "citation to the adverse party, signed by the judge of such "District Court, or a Justice of the Supreme Court, "the adverse party having at least twenty days no- "tice. And upon a like process, may final judgments "and decrees in civil actions, and suits in equity, in*

*"a Circuit Court, * * * * where the matter in dis-"pute exceeds the sum of two thousand dollars, exclusive of "costs, be re-examined, reversed or affirmed in the Supreme "Court, the citation in such case being signed by a judge "of such Circuit Court, or a justice of the Supreme "Court, and the adverse party having at least thirty days "notice, * * * * and every justice or judge signing "any citation on any writ of error as aforesaid, shall "take good and sufficient security that the plaintiff in error "shall prosecute his writ to effect, and answer all dam-"ages and costs if he fail to make his plea good."*

It is evident from a reading of the above acts of Congress, that, in cases of error at law and appeals in equity, the statute itself has in express terms defined the requirements and regulated the proceedings in such cases, and it is a truism to say that no rule of Court can add to or subtract therefrom. While in respect to appeals in admiralty from the District to the Circuit Court, the Act of Congress has made no regulation whatever; except the appeal, when taken, must be to the next term of the Circuit Court, leaving the courts, by their rules, to prescribe in respect to the time of taking and perfecting appeals.

Were any authority needed for this manifest distinction between writs of error and appeals in equity from the Circuit to the Supreme Court, and appeals in admiralty from the District to the Circuit Courts, the case in 3d Mason, 443, above cited, would serve as an admirable illustration. Summed up, it holds:

1st. That, in respect to appeals from the Circuit to the Supreme Court, the statutes have prescribed the *time* with-

in which they may be made, and the *mode* in which it is to be done, and that it is incompetent for the court to annex further conditions or requirements, and

2nd. That, in respect to appeals from the District to the Circuit Courts, Congress having made no provisions except as to the term of the Circuit Court *to which it may be taken, it is competent for the District Court by rule to prescribe the times and modes of making them.*

Next, in respect to the omission to file a bond in the cases in the 2nd Wall. 96, and 5 Wall. 822, which were appeals in equity from the Circuit to the Supreme Court, it is necessary to call the attention of the court to the fact that the Acts of Congress, heretofore quoted, in respect to appeals in equity from the Circuit to the Supreme Court, which define the requirements of such appeals, and regulate the time and the mode of taking the same, nowhere specify the giving of a bond as one of the jurisdictional acts essential to be done by the appellant to perfect, as far as his acts are concerned, his appeal. Repeating here the language of the statute in respect to what is required of the appellant, we call the special attention of the court to it, viz:

After prescribing the limit of five years for an appeal—
"Whereto shall be annexed and returned therewith, at
"the day and place therein mentioned, an authenticated
"transcript of the record, an assignment of errors and
"prayer for reversal, with a citation to the adverse party,
"signed by the judge of such * * court, or a justice of
"the Supreme Court, the adverse party having at least
"* * days notice."

This clause above quoted, specifies all the acts which the appellant must do or cause to be done, in order to perfect his appeal, and the act of Congress itself having enumerated the acts to be done or caused to be done by the appellant, it is not to be maintained that the court, by a rule, may add a new requirement to such enumeration. The absence of the giving of a bond from such enumeration is the sole ground for the decisions in Wallaceabove referred to.

Coming down to the last clause of the Act of Congress in respect to appeals, we find the following, viz:

"And every justice or judge signing any citation on "any writ of error (or appeal,) as aforesaid, shall take good "and sufficient security," &c.

In short, the provision in relation to a bond in respect to an appeal from the Circuit to the Supreme Court, is a mere direction to the court to take such a bond, and is not prescribed as one of the acts to be done by the appellant, for which he is to be held responsible. In the words of the Supreme Court, in 5 Wall., 822, in respect to the appellant himself, and the requirements which he is obliged to fulfill under the Act of Congress regulating appeals from the Circuit to the Supreme Court, we say,

"What is essential to an appeal is allowance, citation to "the appellees, or equivalent notice or waiver, and the "bringing up of the record at the next term of this Court;" but, that "security for prosecution should be taken by the

"judge on signing the citation; but if this duty be omitted or defectively performed, a remedy can be applied here on motion."

Clearly, therefore, if the decision of the Court in 5 Wall. 822, be read in connection with the statute in respect to appeals from the Circuit to the Supreme Court, it is in perfect harmony with the position we maintain in the case at bar; for, when summed up, it holds I—that, under the statute regulating appeals from the Circuit to the Supreme Court, the only essential jurisdictional acts, are:—1st. Allowance. 2nd. Citation to the appellees, or equivalent notice or waiver, and lastly, the bringing up of the record at the next term of the Supreme Court. II. That the duty of taking security is one imposed upon the judge and not upon the appellant, and hence is not jurisdictional, but curable on motion. This is familiar law and is affirmed as a matter of every-day occurrence in both State and national tribunals.

Had the Act of Congress which the Court was here construing, provided that the appellant must give bond for his appeal within any specified time, as a jurisdictional act of his own upon the performance of which the perfecting of his appeal depended, a holding that a failure on the part of the appellant to file the bond within the prescribed time, was not fatal, would have been in the face of a line of decisions, State and National, so numerous that an attempt to collect them would be a labor beyond the province of this brief.

We cite simply—

The Dos Hermanos, 10 Wheat. 306.

A case of appeal in equity from the Circuit to the Supreme Court, holding that the Act of Congress which directs the judge to take security, leaves the time and manner of taking it to his discretion.

One further suggestion alone is necessary, viz.: That no authority can be necessary to the point that the Act of Congress itself having prescribed, in appeals from the Circuit to the Supreme Court, the time and the mode in which such appeals shall be taken, defining what acts are essential and jurisdictional, it is not competent for the court, by rule, to add to such essential and jurisdictional acts, and this in substance is what the case in 5 Wall. above holds.

In the case at bar, however, it is just as clear and indisputable that where, as in cases of appeal from the District to the Circuit Court—the case at bar—the Act of Congress provides nothing in respect to the time or mode of taking appeals, it is competent for the District Court to regulate the time and mode of such appeals by rule or special order in particular case and that such rule or order has the force and effect of statute, see:

Act 1792, ch. 36.
" 1793, " 22.
" 1789, " 20.
3 Mason, 443.
3 Sumner, 495.
1 Black, 522.
1 Abb. Adm., 422.
8 Peters, 262.
14 " 448.
12 " 472.
9 " 329.

The next case referred to by claimants counsel, 20 How. 261, is entirely in our favor; the court on motion dismissed the appeal because the rule of the Supreme Court requiring a transcript within the first six days of the term was not complied with. The statute gave the right of appeal at any time within five years. The appeal was made in time but the transcript was not filed within the first six days of the term, although it was filed within five years, and the court dismissed the appeal for non-compliance with the rule.

The case in 23 How., 1, was the same kind of a case as that in 5 Wall., 822, it being a case of appeal from the Circuit to the Supreme Court where no bond was given. It was there held as in the case in 5 Wall. that the taking of a bond was the duty of the Judge and was not one of the jurisdictional acts required of the appellant.

In the case in 6 How., 112, referred to by claimant's counsel the rule is laid down which we in nowise question. This case affirms that where the laws of Congress (or rules made under and authorized by such laws) define the requirements of an appeal, the courts below cannot change them. It holds, also, that it was unnecessary to petition the District Court to grant an appeal as an appeal was a right given by law which the court could not refuse. That the court could not prescribe the time or manner in which the record was to be transmitted since that was regulated by the Acts of Congress, and that where the time and mode are regulated by Act of Congress the court can neither change or modify such regulations. The counsel for claimant failed to quote the concluding paragraph of

this decision which dismisses the appeal because a proper citation to counsel had not been given and holds this as well as all the other requirements to be jurisdictional. We ask the court to read the whole of this concluding paragraph of this decision.

III. It was next claimed by the counsel for the claimant that an appeal will not be dismissed on account of irregularities. The first case referred to under this head is 94 Otto, 112. This is an appeal in equity from the Circuit to the Supreme Court. It holds that an appeal will not be dismissed for the *non service* of the citation. This holding in nowise militates against the doctrine which we are maintaining in the case at bar.

Referring again to the statute which regulates appeals from the Circuit to the Supreme Court we find the only requirement to be "*A citation to the adverse party, signed* "*by the Judge of such Circuit Court or a Justice of the Su-*"*preme Court.*" There is no requirement or provision in respect to the *service* of this citation except that the act provides that the adverse party shall have at least thirty days notice before the case is brought on for re-examination in the Supreme Court.

The court in this case therefore very properly holds that there being in the case a citation to the adverse party signed by the Judge as required by law, service could still be made, and after thirty days the case proceded with.

This case therefore contains no such anomalous doctrine as that a jurisdictional act may be dispensed with either by the parties or by the court.

The case in 10 Peters, 24, is a case of the construction of a rule of the Supreme Court as to the docketing a cause. It has no jurisdictional question in it and has no application to the cause at bar.

1 Wheat. 305, 361-2. Appeal from Circuit to Supreme Court. No bond given. Held as in 5 Wall., 822, that the giving of a bond is not a jurisdictional act required of the appellant but a duty imposed upon the court. Our comments on the case in 5 Wall. fully apply here.

The case in 20 How., 252, asserts the control of the court over its own rules, and is no more than the District Court itself asserted in the case at bar when it extended the ten days for perfecting the appeal prescribed by its rule to twenty days by a special order in this case. In other words the right of modifying the rule of the District Court by extending the time of perfecting the appeal in this case by special order, resided in and was within the jurisdiction of the District Court alone. That power the District Court in fact exercised. This court has no power to regulate the question of appeals from decrees of the District Court either as to time or as to mode since that power resides exclusively in the District Court. See last clause of the decision in Norton vs. Rich, 3 Mason, 443.

The case in 20 How., above referred to, asserts no power of control in one court over the rules of another court of

matters exclusively within the jurisdiction of that other court.

IV. It was further claimed that an appeal is a matter of right and cannot be restricted by rule or order of court.

It is true of course in cases where by law appeal is allowed, that the appeal is a matter of right within the re-restrictions and limitations imposed by statute or by rules of court having the force and authority of statutes, and not otherwise. For the converse of the proposition is also true; that the vested rights of a party in the judgment or decree of a court of competent jurisdiction are not to be disturbed except in the manner prescribed by law or by rules having the force of law.

The case in 6 How., 112, referred to under this head simply holds that where the statute has limited the time wherein an appeal can be perfected it is incompetent for the court to extend the time, which is familiar law.

The case in 18 How., 530, is unimportant upon this point but will be considered under the sixth head.

In the case in 1 Woods C. C., 593, it appeared that no notice of appeal was entered upon the docket or minutes of the court, but that such notice was given orally in open court at the time such decree was pronounced.

It is to be remarked that the Act of Congress requires no notice of appeal to be entered upon the docket or minutes of the court, and it is to be presumed that there was no

rule of the court for the Southern District of Alabama requiring such entry since no such rule is referred to in the opinion of the court. The court therefore holds that since an appeal is a matter of right, and since it was taken and allowed in open court at the time of the decree, and bond given before adjournment, the appeal was perfected in accordance with the established practice of Courts of Admiralty as set forth in the case of Norton vs. Rich, 3 Mason, 443, an authority already used by us in support of our position in this case. The other authorities referred to in this decision are appeals from Circuit to Supreme Court, and hence under a different rule.

V. It was also claimed by the counsel for the claimant that no appeal in writing is necessary and that all that is required is the giving of the bond and taking up the record to the next term of the Circuit Court.

It would be sufficient to dispose of this proposition to say that the 23rd rule in Admiralty of the court in this District provides otherwise and that such rule having in every respect the force of law is a trifle more decisive of the question than the assertions of counsel. That rule provides that in this District an appeal in Admiralty from the District to the Circuit Court must be in writing, &c., and that when it is filed and bond given the appeal is perfected and not before. The special order made in this case by the District Court provided in express terms that the claimant must perfect his appeal within twenty days from the date of said decree, to-wit:

Dec. 26, 1877, and rule 23 of the District Court above referred to declares that the filing of an appeal in writing and the giving of a bond are both necessary to the perfecting of an appeal. Clearly, therefore, this appeal was not perfected as required by law and, therefore, in the language of Judge Story, in the case of the Steamboat New England, 3 Sumner, 495: "No appeal subsequently "taken by the party, even if offered or entered before the "next term of the Circuit Court, is understood to possess "any validity; but it is treated as a mere nullity."

The case in 18 How., 530, referred to under this head by the claimants' counsel has no application to the case at bar, since that was a case of appeal from the Circuit to the Supreme Court, in which the requirements are totally different under the Acts of Congress from the requirements in appeals from the District to the Circuit Court under our rules. It is admitted, of course, that the Act of Congress regulating the mode of appeals from the Circuit to the Supreme Court does not require such appeals to be in writing and the court was right in so holding. The Act of Congress also allowing in such cases an appeal at any time within five years, and an appeal having in fact been prayed in open court it was competent for the court at the next term (the time for appeal not having yet expired) to enter an order *nunc pro tunc*, showing the fact of a prayer for an appeal, at the former term, and its allowance. It was also held that for the facts the certificate of the clerk was equally competent with the record itself.

What application any of these principles have to the case at bar, is beyond our power to see.

We have already commented on the case in 1st Woods, C. C. 593, under another head.

VI. It was further said by counsel for claimant, that the court can know nothing, judicially, of a case outside the record.

In a general sense this is true, but what aid or comfort for the claimant lies in the proposition, we are unable to see.

In the case in 18 How., 534, the court held that the record showing that an appeal was taken in open court, nothing could be received to impeach it.

Instead of working in favor of the claimant, this doctrine is in our favor. In that case the record and certificate showed jurisdiction in the Supreme Court, and that court held that it was not to be impeached *aliunde*. The trouble with the record in this case is, that the burden of showing jurisdiction in this court, being on the appellant, there is a total absence of the facts and proceedings essential to confer jurisdiction upon the court. The certificate of the clerk, attached to the record, shows that the record contains a full and complete transcript of all the proceedings had in the District Court in this case.

In order that this court should obtain jurisdiction of this appeal, it was necessary that there should have been filed in the District Court on or before January 15th, 1878, an appeal in writing. No such appeal appears in the record,

nor is the fact anywhere certified in this record that such an appeal, in writing, was in fact filed in the District Court. The filing of such an appeal, in writing, in the District Court, being an essential jurisdictional act, the failure of the record to show the performance of such act, is fatal to this appeal.

We admit, of course, that if such act had been performed in fact, and by mistake the record failed to show it, the court, on suggestion of diminution, would send the record back to the District Court to be perfected. But, it is conceded upon all hands that no such appeal, in writing, was ever filed in the District Court in this case; but the records of the Circuit Court show that such an appeal was filed in this court on the 27th day of February, 1878; a month and twelve days after the time for filing such appeal in the District Court had expired.

VII. It was claimed, in addition, that entering an appearance on appeal or writ of error, without giving notice of an intention to take advantage of an irregularity in the citation, is a waiver of such irregularity.

Several authorities are referred to in support of this proposition.

Without any authorities, it would be conceded to be good law.

A citation, of course, is only required in cases of appeal from the Circuit to the Supreme Court, there being no such process in appeals from the District to the Circuit Court.

A citation is, in all essential particulars, a summons, and that a general appearance in a case is a waiver of all defects in the summons, and puts the party in court, is too old law to be a subject of comment.

The proceedings of the Circuit Court upon the motion to dismiss the appeal were a little peculiar. The motion to dismiss was filed and came up duly for hearing and was fully argued by counsel for both sides; and the court being fully advised, dismissed the case upon the ground that no appeal had been perfected as required by the rule of the District Court.

Later, a motion was filed by opposing counsel to re-instate the case, based chiefly upon the fact that the counsel for the appellant here had, by his conduct in the Circuit Court, conferred jurisdiction upon that Court notwithstanding an appeal had not been lawfully taken. The Court will find [Record, pages 215, 216, 217 and 218] the affidavits setting out the acts of counsel which it is claimed gave jurisdiction to the Court notwithstanding no appeal had been perfected. The facts appear to be, substantially, that the counsel for the appellants here had expressed a willingness to try the case in the Circuit Court at a given term, and that it should be specially set for a particular day to accommodate foreign counsel; that after a motion to dismiss the appeal had been filed in the Circuit Court by counsel for the appellants here the opposing counsel desired to take certain depositions to be used upon the trial of the case in the Circuit Court, and that counsel for the appellants here requested the Circuit Court first to dispose of the motion to dismiss the appeal before

said deposition were proceeded with, and that the Court suggested that the depositions might be taken and the motion subsequently disposed of; and upon such suggestion of the Court counsel for appellants here appeared in the examination of the witnesses before the officer taking said depositions.

It is apparent at once, of course, that there is no claim that the defeated p rty in the District Court was prevented from perfecting his appeal to the Circuit Court in accordance with the requirements of the rule of said Court, by any mis c, aduct or act of the successful party or his counsel. It is simply claimed that, the defeated party having failed to perfect an appeal in accordance with the positive provisions of the rules, the successful party has conferred upon the Circuit Court the right to reverse the decree in his favor, by the mere statement of his counsel that he was willing the case should come up at a certain term of Court, (whether upon the merits or otherwise, not stated) and that a particular day should be set therefor, and also, at the suggestion of the Court, consenting to appear at the taking of a deposition while his motion to dismiss was on file, but before it was disposed of. It is also to be observed that there is no pretense that there was any intent upon the part of anybody to waive any rights, or that either party by the conduct complained of has lost any privilege, advantage or opportunity which he otherwise would have had.

If a waiver were possible, which we absolutely deny, it seems to us that to hold that anything had been waived under such a state of facts, is entirely unwarranted.

And in this connection we wish to call attention to the late case of

Grigsby vs. Purcell, 9 Otto, 505,

Which seems to us decisive of the whole matter in controversy.

This was an appeal in equity from the Circuit to the Supreme Court, wherein, as we have already said, appellants were entitled to the whole of the ensuing term for perfecting their appeal. The decree appealed from, was rendered at the February term, 1875, of the Circuit Court. The appeals were not docketed, nor the transcript filed, till after the close of the succeeding (October) term, 1875, of this court. Nothing further was done in the case by either party until December, 1878, when the appellees moved to dismiss the appeal of Grigsby and wife because it was a joint appeal, the appellants not being united but opposed in interest. This motion was overruled. The attention of the court was not called to the delay in filing the transcript and docketing the appeals until January, 1879, when the causes were reached in their regular order on the docket. Counsel for appellees then suggested the delay and moved to dismiss on that account.

The language of the opinion, sustaining the motion to dismiss, and holding that a general appearance on the part of appellees does not constitute a waiver of the objection, is noteworthy—

"Under this legislation it has long been held that if the transcript was not filed and the cause docketed during the term to which it was made returnable, or some sufficient

excuse given for the delay, the writ of error or appeal became inoperative, and the cause might, on that account, be dismissed.

"After the cases of Hamilton vs. Moore and Blair vs. Miller, an attempt seems to have been made in Wood vs. Lide, (4 Cranch, 180,) to adopt a less stringent rule, but the uniform current of decisions since is all the other way; and in Edmonson vs. Bloomshire, we considered the practice so well established as to make it better to resort to the legislature for its correction, than that the court should depart from its settled course of action for a quarter of a century.' There are, however, exceptions to the rule, as in United States vs. Gomez (*supra*,) where there was fraud, and in United States vs. Booth, (21 How. 506,) where the State court to which the writ was directed ordered the clerk to disregard the writ and make no return; *but in all such cases it must appear that the appellant or the plaintiff in error has not himself been guilty of laches or want of diligence.*

"These appellants bring themselves within none of the exceptions which have ever been recognized. There has been no fraud or circumvention, and the whole difficulty arises from their own negligence alone. It does not appear that the clerk was called upon to make the transcript until after the term of this court to which the appeal was returnable had closed. No security for costs ever was given, and in fact nothing was done towards the prosecution of the appeal until it had become inoperative by lapse of time, except to obtain an order of the court for its allowance. To entertain the cause under such circumstances, would be

to encourage an addition to the already burdensome delay necessarily attendant upon litigation in this court on account of the crowded state of the docket. Instead of this, we should, as we do, insist on promptness and activity by all who come here to obtain a re-examination of judgments and decrees against them.

"It by no means follows, as seems to be supposed by counsel who resist this motion, that if parties appear and without objection go to a hearing of a cause docketed after the return term, our judgment will be void for want of jurisdiction. The real objection is not that this court has no jurisdiction, but that the plaintiff in error, or the appellant, as the case may be, has failed to duly prosecute his suit; and this objection may be taken advantage of by the court upon its own motion, or by the appellee or the defendant in error at any time before hearing. Mere appearance does not amount to a waiver. In this case the objection was taken in time."

Without regard, then, to the question of jurisdiction, we submit that in accordance with the principle of the above case, the delay of our opponents to duly prosecute their appeal by filing the notice, was fatal; and the ruling of the Circuit Court that subsequent acts of counsel for appellants here constituted a waiver of our and this court's objection to this laches, was wrong.

The brief of counsel for claimant, which has just been submitted to us, contains certain few matters which we will here comment upon. It starts out with the proposition that our Bill of Exceptions, duly allowed, signed and sealed by the Circuit Judge, (Record, pp. 212, 213,) based as it is solely on the action of the Circuit Court in overruling our motion to dismiss the appeal to that court, was taken too late to enable us to urge our exception here. In other words, that a similar motion had been filed and overruled at the previous term of the Circuit Court, and the Bill of Exceptions should have been taken at that term if at all.

In reply to this we submit—

1st. That the Bill of Exceptions shows upon its face that the motion was overruled on the ground of waiver, and not because a similar one had been previously filed or passed upon.

2d. *Non constat* that the evidence adduced on the hearing of the second motion was the same or confined within the same limits as that brought forward in support of the first.

3d. Instead of striking off our second motion, as the court would have done had it been impertinent, as counsel claim, it was formally heard on its merits and overruled, and our exception allowed.

4th. In addition, we call the attention of the court to the fact that at the time of the overruling of the former motion—March 16th, 1878, (Record, p. 198)—we excepted

thereto, and our exception was entered on the journal. (Exhibit I to Bill of Exceptions, Record p. 219).

Counsel for claimant are thus attempting to occupy positions diametrically opposite, by insisting that our exception to the ruling of the court, duly recorded, avails us nothing; and at the same time, in that part of their brief which deals with the measure of damages, claiming that their own appeal brings up the entire record to this court in such wise, that their failure to except at all to the confirmation of the master's report, or to bring any bill of exceptions whatever here, on their appeal, does not prevent their going into the merits of the case in this court. (See p. 34 *infra*.)

In their discussion of the facts bearing on the question of our waiver of objection to their appeal, counsel make statements unwarranted by the record. They say that counsel for libellants agreed in open court, on March 3d, 1878, that the cause should be tried at a day certain. All the proof offered on this subject is contained in the affidavits marked "Exhibits E and F," attached to the Bill of Exceptions, (Record, pp. 216, 217,) wherein nothing is said as to the place where the alleged agreement was made.

It is said that counsel for libellants appeared at the taking of depositions in the Circuit Court and cross examined, before his motion to dismiss the appeal was filed. On this subject, also, all the proof offered is contained in the affidavits attached as exhibits to the Bill of Exceptions. (Record, pp. 215 to 218.) There is not a word tending to show that this action of counsel was had before the filing of the motion; the affidavits expressly show the contrary.

It is said that "a writing, such as is in the 23d Rule, called an appeal," was filed by claimant's attorneys on Feb. 27th, with a person who was clerk of both the District and the Circuit Courts; and this is said with the evident object of implying that the error committed in filing it in the latter, instead of the former court, was chargeable to the clerk rather than to claimant.

Exhibit "J," to Bill of Exceptions, (Record, p. 220,) is a transcript of this pretended notice of appeal, and shows its caption to be "In the Circuit Court;" and that it was in fact filed therein, was found by the Judge of that Court. (Record, page 213.)

We have already (pp. 26, 27, *supra.*) sufficiently discussed the effect, as a waiver, of the facts actually disclosed by the record herein; and what we have said in pages 9–25, inclusive, relieves us of any necessity of direct reply to our opponent's claim that it is discretionary with the Circuit Court to disregard the rules of the District Court, and that the exercise of this discretion is final and cannot be reviewed here.

II.

We are informed by opposing counsel that they propose to ask for a reversal of the action of the Circuit Court in confirming the report of the master to whom the case was referred in that court to ascertain the damages. (See Report, Record, p. 221). The point to which they object is this: The going rate of freight during the time of detention of the claimant's vessel (the Osborne) after the collision was $4 per ton. The Osborne was under charter for the season at the rate of $2 per ton. The master computed her damages on account of this detention on the basis of the charter rate of $2, instead of the going rates.

The claimant excepted to this finding of the master. (Record, p. 224-5). The Circuit Court overruled the exceptions and confirmed the report. (Final Decree, Record, p. 263).

As the claimant has failed to except to the action of the Circuit Court in confirming the report, any discussion at this time of the merits of the report seems superfluous. Were the question before this court, we should rely upon—

Williamson vs. Barrett, 13 How., 101—vid. pp. 111, 112—

in support of our view of the correctness of the ruling below; but, as the claimant has in this instance, as well as in that of his former appeal, let pass his day of grace, we consider it too late for him to import into his brief a matter which has no place in his bill of exceptions.

Respectfully submitted,

H. L. TERRELL,

Proctor for Appellants.

15 Otti 447

Supreme Court of the U. S.

WINSLOW & WINSLOW,
Appellants,

vs.

No. 243.

WILCOX, OWNER AND CLAIMANT,
OF THE SCHOONER "OSBORN."

IN ADMIRALTY ON APPEAL FROM THE CIRCUIT COURT OF THE NOTHERN DISTRICT OF OHIO.

Supplementary Brief for Appellants.

A. G. RIDDLE, *of Counsel.*

THE APPEAL AND WHAT IT BROUGHT HERE.

The Plaintiffs appeal from so much of the decree and ruling of the Circuit Court, as adjudges that the case was properly appealed from the district court, into said circuit court, by said Wilcox, owner and claimant; also from so much as found that the collission complained of, was by the mutual fault of the vessels named, and decreed damages and costs accordingly. (Rec. p. 266.)

The record does not contain findings of fact by either of the courts below; nor any exceptions to the ruling of the circuit court, on the merits of the case; and hence the only question open here, is as to the appeal from the district to the circuit court.

Was that appeal perfected under the rules and practice governing appeals in admiralty?

Did the circuit court acquire jurisdiction of the case?

NOTE.—The record shows that Wilcox, appellee, gave notice of his intention to appeal, also, he gave appeal bond, but took no steps in his appeal; although the briefs, of counsel, for both parties treat the case as here on his appeal also. I suppose that matter is not open to him. (Rec. p. 263, 267.)

HOW THE QUESTION AROSE.

The Winslows, owners of the schooner "American Union," libeled the schooner "S. S. Osborn," for colliding with the "Union," August 9th, 1872, and claimed damage and demurrage, $8,500. (pp. 3, 7.)

Wilcox answered, denying negligence, and counter libeled for $17,000 and demurrage.

The case was referred, depositions taken, and report in favor of the Winslows, $4,030, which included interest. (p. 175.)

Exceptions to this report and decree for the amount, and cross libel dismissed. (p. 179.)

The decree was made December 26, 1877. Wilcox gave notice of appeal, and bail ordered in $8,000.

Time for perfecting appeal was extended twenty days from date of the decree. Bond for the appeal was given in time. Id.

February 27, 1878, the transcript was filed in the circuit court, and with it was also filed an appeal, pointing out the matter complained of. (Rec. p. 180, 81.)

No other act or thing was done in the district court, in the matter of this appeal.

This was no compliance with the 23d rule of the District court, prescribing the mode of appeal. (See Rec. pp. 213, 214.)

March 12th, the Winslows motioned to dismiss the appeal for disregard of the rule. (Rec. p. 181.) Which was heard and allowed the same day. (Rec. p. 196.)

On the 13th, Wilcox filed his motion to vacate the last order, and reinstate the case. (Rec. p. 191.)

This motion was allowed the next day, and the Winslows excepted. (Rec. p. 198.)

At the ensuing term, June 12th, the Winslows repeated their motion to dismiss. September 19, this was heard and overruled. (Rec. pp. 211, 212.)

To this decision formal exceptions were taken, to which is appended as exhibits, the various papers used on the hearing, among them Ex. A. sets forth the 23d rule. (Rec. pp. 211 to 221.)

ASSIGNMENT OF ERRORS.

The circuit court erred in reinstating the case after dismissing the appeal.

It erred in overruling the second motion to dismiss.

It erred in retaining and adjudging said case.

REMARKS.

It is not my purpose here to discuss the authorities bearing on the general proposition. That has been exhaustively done by the original counsel in the case. To these reference will be made.

Among the points to which the attention of the court will be invited, is—

First. The matter of taking an appeal is purely and entirely the act of the party, as much and in the same sense, as the commencement of a suit. In each case he uses the implements furnished by the law and rules of

court. Without them he cannot in either case get into court. The action is his. Hence he has his action. In admiralty there are special reasons why he must act to secure an appeal.

The law authorized an appeal. The court under the law furnished the only instrumentalities by which this could be done; neither he nor the court could work an appeal in any other way. An appeal is not matter of law nor of ordering by the court, and neither can supply the want of action by the party.

This is not a case of being mislead by the court, or opposing party, but one of sheer doing nothing, by the would-be appellant. The paper he filed in the circuit proves that he thought it an essential thing. He thought he had appealed from the district to the circuit court. He now thinks he has appealed from the circuit to this court.

Second. Giving bail and filing the transcript are not an appeal, nor are they part of an appeal. Giving bail may be wholly dispensed with. When required it is an important incident. Sometimes necessary to render an appeal effective. It is like giving bail for costs at the commencement of a suit, when that is required. This, like the matter of filing a transcript, is often permitted, out of rules, to give effect to an otherwise perfect appeal. When a man has in good faith placed himself and case within the jurisdiction of a court, it will help him to stay there; but he must first put himself within that jurisdiction by *his own* act.

Cases where appeal bonds and transcripts were permitted to be filed out of rule to perfect an appeal, do not help a case where no appeal was taken by the party.

Third. The court held that the appeal was irregular, but that the Winslows by their conduct, waived or cured this irregularity. This ground is distinctly abandoned by the brief. (p. 7, par. 3)

Counsel here contend that as the right of appeal was given by law, and the manner fixed by rule, the court could waive the rule.

It is not necessary to discuss this matter, for the court did not attempt to waive or suspend the rule. It held it to be in force and applicable; and said that the Winslows had waived the non-compliance with it, which the counsel now say was untrue and furnished no reason for the action of the court, in the premises. The brief spends its learning and strength, both very considerable, to show that the court might have done what it did not do; and also that the 23d rule, which prescribes the manner in which the right of appeal may be exercised, is void, as impairing the integrity of the statute authorizing appeals.

Unquestionably in an extreme case, like that in 20 How. *a court can suspend its own rules*, to save the rights of a party not in fault. But the argument is to show, that the circuit court, might have suspended the 23d rule of the district court—which it did not do—in favor of a party guilty of pure and gross inadvertence.

No case of this extent exists.

How absurd to argue that a suspension of rules was a matter of descretion and not reviewable; when as stated the court did not pretend to suspend the rule. Let me give the language of the court, in setting aside the order, dismissing the appeal.

The court "doth find that notwithstanding said appeal was not perfected in accordance with the rules of said district court; yet the court, being of opinion that the irregularity in said appeal has been waived by the appellees, doth order that this cause be reinstated on the docket of this court."

In the face of which are eleven pages of closely packed learning and citation of authorities to show that the court might have suspended the rule, and that the rule itself was invalid.

The question recurs, shall the party himself take his appeal; or shall he do nothing and the court eke out an appeal for him, in spite of the rules which he has disregarded, and which the court did not suspend. It is not the case where the court gives an insufficient reason for a decision. It did not decide as alledged.

Fourth. With my view that Wilcox is not an appellant here, and the appeal of the Winslows does not open the record to him; I make no points on the case which his counsel affirmatively discuss in their brief, and which are sufficiently replied to.

A. G. RIDDLE,
of Counsel.

15 Otto 447

IN THE

Supreme Court of the United States.

WINSLOW, ET AL.,	Appeal by the Winslows and Cross Appeal by Wilcox, Cross Libellant.
VS. 243	
WILCOX, Claimant,	
AND	
B. O. WILCOX	
VS. 1211	
THE SCHOONER AMERICAN UNION.	

REFERENCES TO AUTHORITIES IN ANSWER TO QUESTIONS BY THE CHIEF JUSTICE AND JUSTICE HARLAN, ON ORAL ARGUMENT.

1. His HONOR, Justice Harlan, inquired whether the Record showed that bail had been given for the appeal to the Circuit Court.

In answer, I call attention to page 197 of the Record, showing that bail was given within the time fixed by the Court. This fact is stated in the motion for setting aside the order dismissing the appeal, and forms a part of the Record, and is nowhere controverted.

2. The Chief Justice inquired whether the Court had *authority* to allow the docketing of the cross appeal at this time.

In answer to this inquiry, I call attention to the language of the statute, Sec. 698, which simply requires "a transcript of the Record" to be *transmitted* to the Supreme Court, and says nothing about docketing; and Sec. 1013, which provides that one Record shall answer for both appeals; and to the following authorities bearing on the question: 18 Howard, 530, 537, 538, which decides that the *validity* of the appeal depends solely upon the statute; and that a compliance with *its* provisions gives the Court *jurisdiction*, and is not affected by any clerical omission. The docketing is clerical—the *act* of the *clerk*, and not of the *party*, and is subsequent to the attaching of *jurisdiction*.

The docketing, etc., is provided for by rule 9; and all that is done in this Court *after the transmission* of the Record, is not *jurisdictional*, and is exclusively under the rules of the Court, and subject in all respects to the control of the Court in the exercise of its discretion.

Owings vs. Tiernan, 10 Pet. 24, decides that a case may be docketed at a subsequent term when the Record was transmitted at the proper term of the Court; and that a case will

not be dismissed under such circumstances unless a motion for that purpose is made before the case is docketed. Also see 10 Pet. 447.

Brobst vs. Brobst, 2 Wall. 96–7. In this case the docketing was at subsequent term.

Dos Hermans, 10 Wheat. 306. In this case bail was allowed to be given after the time for appeal had elapsed, relating back.

5 Wall. 822. Bail was given subsequent to the term. The principle running through all the cases is, that whatever the *statute* has provided should be done, to bring the case within the *jurisdiction* of this Court, cannot be waived; but that everything *subsequent* to the jurisdiction so acquired is governed by the rules of the Court and subject to the control of the Court in the exercise of its discretion; and on this principle there can be no distinction between the allowing of the *docketing* and the giving of bail for the clerk's costs, so far as the *authority* of the Court is concerned.

L. PRENTISS,

Proctor for Cross Appellant.

SUPREME COURT

UNITED STATES.

Ex Parte WILLIAM P. SLAYTON.

Petition for Writ of Prohibition.

ALFRED RUSSELL.
Attorney for Petitioner.

DETROIT:
JOHN F. EBY & CO., PRINTERS, 46 LARNED ST. W.
1881.

To the Supreme Court of the United States:

The petition of William P. Slayton, administrator of the estate of Montgomery Crossman, deceased, respectfully shows:

That the Goodrich Transportation Company is a corporation, created and existing under the laws of the State of Wisconsin, and was the owner of the steamer "Alpena," at the time of her loss, hereinafter mentioned. That on or about the 16th day of October, 1880, said steamer foundered and sank in Lake Michigan, and as your petitioner believes, within the boundaries of the State of Michigan, causing the loss of all her passengers and crew, and of her cargo. That a large number of passengers were on board of said steamer at the time of her loss, including petitioners intestate.

That upon the 3rd day of January, A. D., 1881, said Goodrich Transportation Company filed its petition in the District Court of the United States for the Northern District of Illinois, in Admiralty, to limit the liability of said company, a copy of which petition is hereto attached, marked "Exhibit A."

That on the 6th day of January, 1881, in accordance with one of the prayers in said petition, an order was made by said Court appointing Albert T. Spencer trustee, to whom might be transferred said "Alpena," and her pending freight.

That on the 11th day of January, 1881, said trustee reported that he had received an assignment of said steamer and its pending freight; and the said Court thereupon ordered "that a monition issue against all persons claiming any damages against said steamer, or the owner thereof, for any embezzlement, loss, destruction, damage or injury, citing them to appear before this Court and make due proof of their claims on or before the first Monday of May, 1881," which said monition was duly issued and returned, served

according to the direction of said Court in said order contained.

That upon the 31st day of March, 1881, your petitioner, as administrator, commenced suit in the District Court of the United States for the Eastern District of Michigan, in Admiralty, against the said Goodrich Transportation Company for the same cause of action, and based on the same grounds as are set forth in "Exhibit C;" that said Goodrich Transportation Company has duly appeared in said cause, and that no other suit has been commenced to recover damages by reason of the foundering of said "Alpena."

That upon the 8th day of April, 1881, your petitioner, and a large number of other persons, having claims against said Goodrich Transportation Company, filed their claims, under protest, in said Court, and excepted to said petition for want of jurisdiction, a copy of the claim and exceptions of petitioner being hereto attached, marked "Exhibit B," and made a part hereof.

That a hearing was had upon said exceptions, and upon the 15th day of July, 1881, said exceptions were overruled and all the claimants were directed to answer the petition.

That on the 13th day of Sept., 1881, petitioner and all of the other claimants who had appeared in said cause filed their answers, under protest, to said petition, "Exhibit A," a copy of the answer of petitioner being hereto attached, marked "Exhibit C," and made a part hereof.

Your petitioner respectfully submits that said District Court of the United States for the Northern District of Illinois, in Admiralty, has no jurisdiction to proceed in said cause, or to limit the liability of said Goodrich Transportation Company, but said District Court is proceeding with said cause notwithstanding the fact that it has no jurisdiction, as aforesaid.

Your petitioner therefore prays that a writ of prohibition may be issued out of this Court restraining and prohibiting the said District Court of the United States for the Northern

District of Illinois, in Admiralty, from proceeding further in said cause, and from entering any decree therein, except to dismiss said petition.

And your petitioner will ever pray, etc.

[Signed,] WILLIAM P. SLAYTON.

EASTERN DISTRICT OF MICHIGAN. } ss.

On this 22nd day of September, A. D. 1881, before me, at Marshall, in said District, personally appeared the above named William P. Slayton, who being first duly sworn, deposes and says, that he has read the foregoing petition by him subscribed, and knows the contents thereof, and that the same is true.

[Signed,] WILLIAM D. ADAMS,
U. S. Commissioner in and for the Eastern District of Michigan.

"EXHIBIT A."

PETITION FOR LIMITATION OF LIABILITY.

UNITED STATES OF AMERICA, NORTHERN DISTRICT OF ILLINOIS. } ss.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.—IN ADMIRALTY.

To the Hon. Henry W. Blodgett, Judge, etc.:

The petitioner of the Goodrich Transportation Company respectfully showeth:

That your petitioner is a foreign corporation created by and existing under the laws of the State of Wisconsin, and is the sole owner of the steamer "Alpena," her engine, tackle, apparel and furniture.

That the said steamer "Alpena" was, at the time hereinafter mentioned, an American vessel of upwards of twenty tons burden, duly enrolled and licensed for the coasting trade, and employed in business and commerce and

said passengers and crew on board said steamer when she so foundered and sank ; which claims, if established, will greatly exceed the present value of said steamer, her engines and boilers, tackle, apparel and furniture and of her freight pending at the time of such foundering and loss.

Your petitioner therefore prays that it may be declared as entitled to the benefit of the Act of Congress of the United States, entitled, "An Act to limit the liability of ship-owners, and for other purposes," passed on the third day of March, 1851 ; that the present value of the interest of your petitioner in the said steamer, her engines and boilers, tackle, apparel and furniture, and her freight pending at the time of such foundering and loss, may be appraised by appraisers to be appointed by the Court, to the end that your petitioner may pay the same into the registry of this Court, and that a monition may issue against all persons claiming any damages of any kind by reason of said collision, foundering and loss, citing them to appear before this Court and make the proof of their respective demands ; and that this Court would declare the limit of the owners' liability by reason of said collision and foundering and loss, and would upon the payment of said amount into the registry of this Court, decide the said owners exempt from further liability, and that this Court would distribute among the parties proved entitled thereto, any amount so paid into this Court ; or that this honorable Court will appoint a trustee to whom your petitioner may transfer all its interest in said steamer "Alpena," her engines, boilers, tackle, apparel and furniture, and the freight pending at the time of said foundering and loss, for the benefit of all parties concerned, and that from and after such transfer by your petitioner to such trustee all claims and proceedings against your petitioner as such owner of said steamer "Alpena" shall cease, and your petitioner held to be exempt from further liability on account of said collision and loss, as aforesaid, and that this honorable Court will restrain all persons from prosecuting any suits

against the said owners to recover damages arising out of the collision mentioned in the said libel between the steamer "Alpena" and the schooner "F. B. Stockbridge," as well as all damages arising out of the foundering and loss of said steamer and cargo; and that your petitioner may have such other or further relief as may be just and proper in the premises, and as the Court shall be pleased to grant.

(Signed) GOODRICH TRANSPORTATION CO.,
By F. G. Butler, Vice-President.

COOK & UPTON, *Proctors.*

United States of America, }
Northern District of Illinois. } ss.

F. G. Butler, the Vice-President of the Goodrich Transportation Company, being duly sworn, deposes and says that he has read the foregoing petition, that the allegations therein contained are true, except those made on information and belief, and as to those he believes them to be true.

(Signed) F. G. BUTLER.

Subscribed and sworn to before me this 27th day of December, A. D. 1880.

(Signed) EDWARD S. UPTON,
[Seal] *Notary Public.*

EXHIBIT B.

CLAIM AND EXCEPTIONS.

UNITED STATES OF AMERICA—NORTHERN DISTRICT OF ILLINOIS.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE NORTHERN DISTRICT OF ILLINOIS.—In Admiralty.

In Re—The Petition of the Goodrich Transportation Company.

William P. Slayton, administrator of the estate of Mont-

gomery Crossman, deceased, not submitting to the jurisdiction of this honorable Court, but protesting against the same, and appearing solely for the purpose of excepting thereto, makes claim of damage against said Goodrich Transportation Company, by reason of the death of said Montgomery Crossman, caused by the foundering and loss of the steamer Alpena through the negligence of said Goodrich Transportation Company, at the time set forth in said petition viz., on the 16th October, 1880; and this claimant shows that he was duly appointed administrator of said Montgomery Crossman by the Probate Court of Calhoun County, Michigan, on the 29th day of November, 1880, and makes profert of his letters testamentary to be produced and proved, as this honorable Court may direct.

(Signed) W. P. SLAYTON,

Administrator of the Estate of Montgomery Crossman, deceased.

EASTERN DISTRICT OF MICHIGAN, } ss.
COUNTY OF CALHOUN. }

William P. Slayton, of said district, being duly sworn, deposes and says that he is the claimant aforesaid; that he has heard read said claim, and knows the contents thereof, and that the same is true.

(Signed) WILLIAM P. SLAYTON.

Sworn and subscribed to before me this
2d day of April, A. D. 1881.

(Signed) WM. D. ADAMS,

U. S. Commissioner in and for the Eastern District of Michigan.

UNITED STATES OF AMERICA—NORTHERN DISTRICT OF ILLINOIS.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE NORTHERN DISTRICT OF ILLINOIS—IN ADMIRALTY.

IN RE—THE PETITION OF THE GOODRICH TRANSPORTATION COMPANY.

The exceptions of William P. Slayton, administrator of

the estate of Montgomery Crossman, deceased, claimant to the petition of the Goodrich Transportation Company.

First Exception.—That it appears in and by said petition that this Court has no jurisdiction to determine or adjudicate the matters therein set forth.

Second Exception.—That it does not appear in and by said petition, that the said Goodrich Transportation Company has been sued for any loss, damages or injury whatsoever arising from the foundering or loss of said steamer Alpena, as set forth in said petition.

Third Exception.—It does not appear in or by said petition that, by reason of the collision of September 10, 1880, between said steamer Alpena and said schooner Stockbridge, any other loss, damage or injury has accrued against said Goodrich Transportation Company, or that the loss and damage caused to said schooner Stockbridge exceeded the value of said steamer Alpena, or that the alleged foundering and loss of said steamer Alpena was caused by said collision.

Fourth Exception.—That petitioner does not pray that the value of said steamer Alpena at the time immediately subsequent to said collision may be appraised, and does not offer to pay the same into Court to be distributed among any claimants entitled thereto.

Fifth Exception.—That petitioner does not offer to pay any sum into Court, or to give any stipulation for the amount found to be the value of said steamer Alpena upon appraisal.

Sixth Exception.—That petitioner does not pray for appraisal of the value of said steamer Alpena immediately subsequent to the foundering and loss, in said petition set forth.

Seventh Exception.—That the Act of Congress of 1851, limiting the liability of ship owners, does not include loss or damage caused by personal injuries or loss of life.

Eighth Exception.—That said petition is multifarious, in

that it seeks to cover losses arising upon separate and distinct occasions.

Ninth Exception.—That this Court has no jurisdiction to adjudicate claims for loss of life arising within the State of Michigan.

Tenth Exception.—That the petitioner does not ask an appraisal of the value of said steamer Alpena immediately before said loss and offer to pay the same into Court.

Eleventh Exception.—That the petition seeks to limit the liability of the petitioner to the value of the vessel, for claims arising from losses occurring on separate and distinct voyages.

Twelfth Exception.—That the petition does not offer to make an assignment of the interest of the petitioner in and to the vessel and pending freight, or to pay the value of the same into Court for the exclusive benefit of those who suffered loss on the voyage in which the steamer Alpena was lost.

In all of which particulars said petition is imperfect and insufficient, and therefore said claimant is not bound to answer the same, and he prays that said petition may be dismissed with costs.

READ & WAMSLEY,
Proctors for Claimant.

CARPENTER & McLAUGHLIN,
H. M. CAMPBELL,
ALFRED RUSSELL,
Of Counsel.

EXHIBIT C.

ANSWER TO PETITION.

UNITED STATES OF AMERICA—NORTHERN DISTRICT OF ILLINOIS.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

IN ADMIRALTY.

IN RE—THE PETITION OF THE GOODRICH TRANSPORTATION COMPANY.

The answer under protest of William P. Slayton, Administrator of the estate of Montgomery Crossman, deceased, respondent to the petition of the Goodrich Transportation Company.

This respondent, having heretofore excepted to the jurisdiction of this honorable Court, without waving the benefit of the exceptions aforesaid, or of the many other insufficiencies in said petition contained, and protesting against the jurisdiction of this Court, doth answer as follows:

First. Respondent admits the incorporation of the petitioner, the nationality, ownership, tonnage, enrollment, license and employment of the steamer Alpena, as alleged in said petition.

Second. This respondent admits that upon or about the 16th day of October, said steamer Alpena, while on the trip described in said petition, and while owned by the petitioner, was lost in a severe storm upon Lake Michigan, and as respondent charges, within the boundaries of the State of Michigan; that there were passengers on board said Alpena, and that all passengers, officers and crew were lost, but respondent denies that said loss was without the fault or neglect of the officers or crew, or was without the privity or knowledge of the petitioner. And respondent charges that the said foundering and loss were caused by the gross neg-

ligence of the petitioner, the particulars of which are hereinafter fully set forth.

Third. Respondent denies that said steamer was, at the time she entered upon said trip, in good, seaworthy condition, or was strongly and suitably built of sound material, and denies that said steamer was well or properly manned or equipped, or was accompanied by the requisite number of competent and experienced officers and crew.

Fourth. Respondent admits that said steamer and her equipments, except as hereinafter stated, sank at or near the locality set forth in said petition. That the averments in said petition as to the parts washed ashore, are true in every particular, and that respondent believes that other parts were washed ashore.

Fifth. Respondent neither admits nor denies the matter alleged in reference to the schooner F. B. Stockbridge.

Sixth. Respondent has no knowledge as to the cargo upon said steamer Alpena, or the owners thereof, and leaves the petitioner to make such proof thereof as may be deemed material.

Seventh. Respondent is informed and believes, and so charges, that the petitioner, prior to the loss aforesaid, had been grossly negligent in respect to said steamer Alpena, her equipment and management, and carelessly and negligently permitted said steamboat Alpena to become and remain in an unseaworthy condition, with known defects in its steaming apparatus and hull; and carelessly and negligently omitted to provide the said Alpena with sound and sufficient machinery, engines and boilers; and carelessly and negligently permitted the steaming apparatus of said Alpena to be and to remain insecurely fastened in and to the hull; and carelessly and negligently permitted the upper deck of said steamboat Alpena to be and remain insecurely fastened to the hull; and carelessly and negligently permitttd the hull of said Alpena to become and remain rotten, imperfect, insecure and unseaworthy; and carelessly and negligently omitted to provide said Alpena with suffi-

cient and proper lifeboats, life-rafts, and life-preservers; and carelessly and negligently omitted to provide suitable lifeboat disengaging apparatus for use on board of said Alpena; and carelessly and negligently manned and permitted to remain manned the said Alpena with incompetent and insufficient officers, seamen and employes; and carelessly and negligently omitted to use due care in the carrying of the decedent as passenger as aforesaid; and carelessly and negligently allowed and directed the said Alpena to set out on her journey when a dangerous storm was likely to soon overspread her entire route, and when that fact was well known to the petitioner; and carelessly and negligently omitted each and every precaution hereinafter mentioned, as required by those clauses below given, of Rules 12, 13, 14, 17 and 57 of General Rules and Regulations prescribed by the Board of Supervising Inspectors of steam vessels, January, 1875; revised and amended, January, 1877, 1878, 1879, and January and May, 1880, approved by the Secretary of the Treasury. Rule 12 provides: "All lifeboats must be substantially built; * * all lifeboats must have lifelines securely fastened to their gunwales, and a good rope painter of suitable size and length properly attached, and every lifeboat must be supplied with not less than four oars; all boats must be properly supplied with lines and oars, and kept in good condition for immediate use." Rule 13 provides that "passenger steamers navigating the ocean, northwestern lakes, lakes, bays and sounds of the United States, must be equipped with lifeboats in proportion to their tonnage, as follows:

Between 300 and 400 tons - -	4 boats.
Between 400 and 500 tons - - -	5 boats.
Between 500 and 1,000 tons - -	6 boats.
Between 1,000 and 1,500 tons - -	7 boats.

All these boats must be of proper size and substantially built, with reference to the trade in which the steamer is engaged. *Provided however*, That no steamer shall be required to have more lifeboats than sufficient to carry the passengers she is allowed by her certificate of inspection, together with her officers and crew. * * * All steamers

hereafter built (for such navigation as is above described,) shall be equipped with life-rafts, in proportion of one, at least, to every two lifeboats required.

Rule 14 provides: "Such life-rafts must be suitably equipped with life-lines and oars."

Rule 17 provides: "Every life-preserver, adjustable to the body of the person, shall be made of good, sound cork blocks, and other suitable material, with belts and shoulder straps properly attached, and shall be so constructed as to place the cork underneath the shoulders and around the body of the person wearing it * * * * * And there shall be a printed notice posted in every cabin and state-room, and in conspicuous places about the decks, informing passengers of the location of life-preservers, and other life-saving appliances, and of the mode of applying and adjusting the same. Inspectors are further required to direct (which direction was duly given) such life preservers to be distributed throughout the cabin, state-rooms, berths and other places convenient for passengers on such steamer."

Rule 57 provides: "And it shall be the duty of such master or of the mate or officer next in command, once, at least, in each week, to call all hands to quarters and exercise them in the discipline and use of the fire pumps, and all other apparatus for the safety of life on board of such vessel, and to see that all the equipments required by law are in complete working order for immediate use."

All of which negligent acts and omissions occurred at the time the said petitioner received the said decedent as a passenger on the said Alpena, and at the time of the foundering of said Alpena, and during the time the said decedent was a passenger as aforesaid on said Alpena, and at the time the said petitioner received the passage money of the said decedent, and also before and prior to the time said decedent was so received as a passenger.

That all the acts of negligence and omission were well known to said petitioner, and that in consequence thereof, as respondent is informed and believes said Alpena found-

ered and sank, causing the death of the respondent's intestate while he was a passenger on said Alpena, as below shown.

Eighth. That on the 15th day of October, A. D. 1880, the said petitioner received at Grand Haven, in the State of Michigan, as a passenger on board the said steamboat Alpena, the said Montgomery Crossman, deceased, to be carried as a passenger on said Alpena for a certain reasonable reward, to it, the said petitioner, in that behalf, from Grand Haven aforesaid, to the port of Chicago, in the State of Illinois, and by reason thereof, it became the duty of the said petitioner that due care should be used to carry the said respondent's intestate safely from Grand Haven, aforesaid, to Chicago, aforesaid.

Ninth. That said respondent's intestate at and prior to the time of his death was a resident of the State of Michigan, and was engaged in the occupation of a machinist; that said respondent's intestate at that time was of the age of 38 years and upwards, of sound bodily health, of good and industrious habits, and earned by his labor in such occupation aforesaid, the sum of two thousand dollars, or thereabouts, per annum, and that there is a great probability that had said decedent lived, his annual income, resulting from his labor in the aforesaid occupation, would have been greatly increased. That said decedent left him surviving, the following named next of kin: Nettie Crossman, wife of said decedent, Mabel Crossman and Eva Crossman, daughters of said decedent, to whose support, maintenance and wealth the said decedent annually contributed the sum of fifteen hundred dollars, or thereabouts; that these annual contributions would have been continued, and probably in increased amounts, had the decedent lived; and that said next of kin were put to a large expense in searching for the body of said decedent, and in and about the funeral and burial of said body, to wit: $150.

Tenth. That afterwards, and on the 29th day of November, 1880, the respondent was appointed administrator of the estate of said decedent by the order of the Probate Court of Calhoun county, Michigan, and herewith shows his letters of administration to the Court.

Eleventh. That in consideration of the foregoing, and by virtue of Chapter 212 of the Compiled Laws of Michigan of 1871, as amended by Act No. 94 of Public Acts of Michigan of 1873, the respondent, as administrator aforesaid, has suffered damages to the amount of twenty thousand dollars, which your respondent claims is enforceable against said petitioner.

Twelfth. Respondent demands a trial by jury of the matters in said petition and this answer set forth.

Thirteenth. Respondent submits that said petitioner, in and by its said petition has not made or stated such a case as entitles it to the relief prayed, and respondent claims the same benefit thereof as upon separate exceptions therefor.

Wherefore respondent prays that said petitioner may be decreed not to be entitled to the benefit of the Act of Congress in said petition set forth; and that said petition may be dismissed with costs.

[Signed] WILLIAM P. SLAYTON,
Respondent.

READ & WAMSLEY,
Proctors for Respondent.

CARPENTER & McLAUGHLIN,
H. M. CAMPBELL,
ALFRED RUSSELL,
Of Counsel.

EASTERN DISTRICT OF MICHIGAN. } ss.

Be it remembered, that on this 15th day of August, A. D. 1881, before me at the City of Marshall, Calhoun county, Michigan, personally appeared William P. Slayton, respondent aforesaid, and made solemn oath that he had heard read the foregoing answer by him subscribed, and knows the contents thereof, and that the same is true, except as to those matters therein stated on information and belief, and as to them he believes it to be true.

[Signed,] J. R. BENTLEY,
Notary Public.

(Notary Seal.)

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1881.

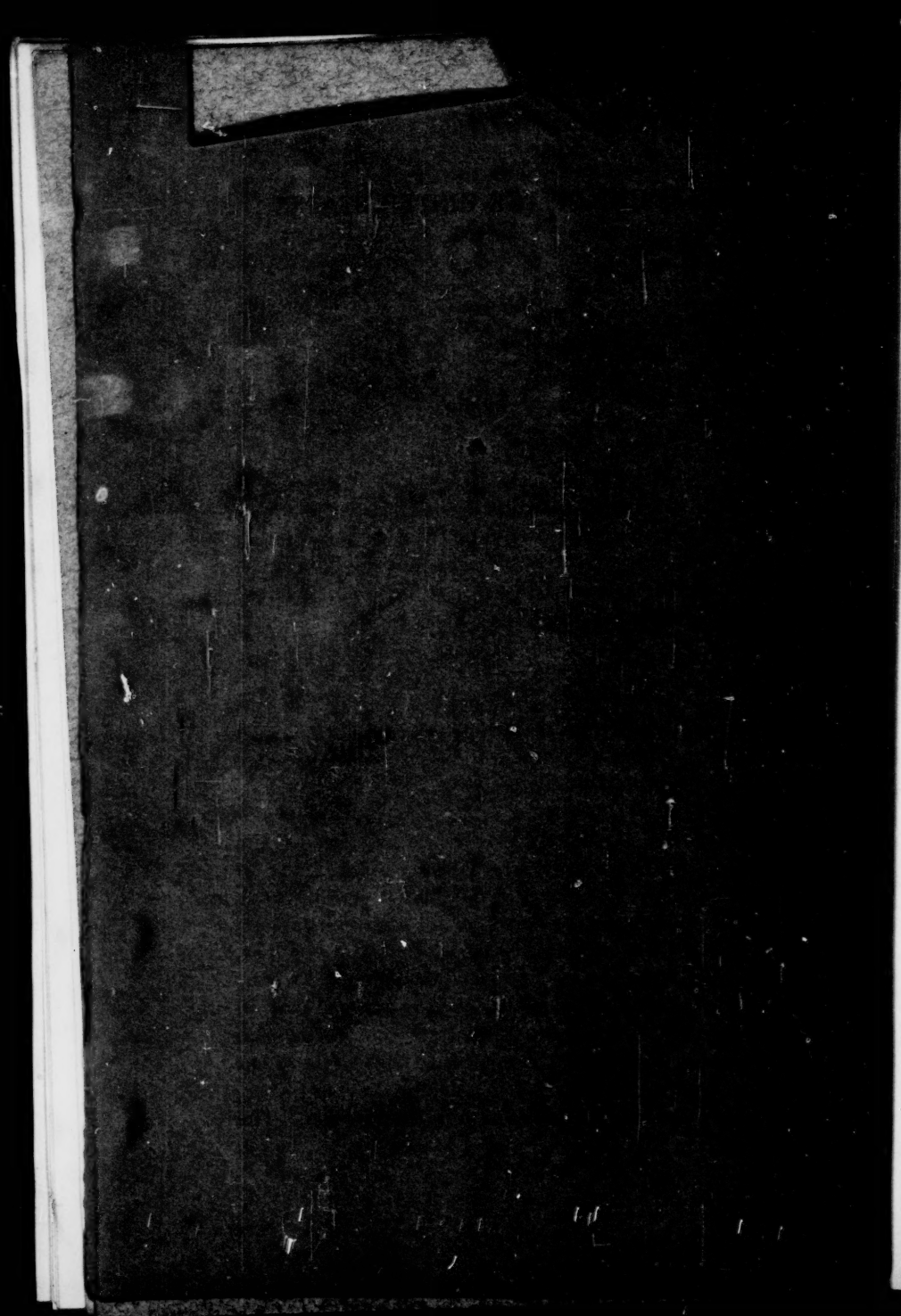
Ex Parte WILLIAM P. SLAYTON.

Petition for Writ of Prohibition to Dist. Court, N. D. Illinois.

Supplementary Brief for Petitioner.

ALFRED RUSSELL,
Attorney for Petitioner.

DETROIT:
JOHN F. EBY & CO., PRINTERS, 46 LARNDD ST. W.
1881.



SUPREME COURT OF THE UNITED STATES

EX PARTE WILLIAM P. SLAYTON.

The brief filed with the petition is deemed sufficient on the questions therein discussed, but on the question whether the Limited Liability Act of 1851, as amended in 1873, covers damages for personal injuries or for loss of life, we offer this supplementary brief.

I.

The only portion of that statute which can be construed to cover such damages is the italicised clause of sec. 3 statute 1851. Section 3 reads:

"The liability of the owner or owners of any ship or vessel, for any embezzlement, loss or destruction by the master, officers, mariners, passengers or any other person or persons of any property, goods or merchandise, shipped or put on board of such ship or vessel, or for any loss, damage or injury by collision, *or for any act, matter or thing, loss, damage or forfeiture*, done, occasioned or incurred without the privity or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner or owners respectively in such ship or vessel and her freight then pending."

A change was made in this section in the revision. The

clause, "any person," was substituted for the clause, "the master, officers, mariners, passengers or any other person or persons," and "matter or thing, loss," was changed to "matter or thing lost." See sec. 4283 Revised Statutes.

But this change would seem unimportant as affecting the construction of the section. It is doubtful if the words "matter or thing lost, damage or forfeiture," standing alone, are broad enough to include personal injury.

Smith v. Brown, L. R., 6 Q. B., 729.
Simpson v. Blues, L. R. 7, C. P., 292.
James v. London, etc., R. R. L. R., 7 Ex., 187-287.

But admit that they are broad enough. If Congress had intended to use them in that broad sense the preceding clauses of the section would not have been enacted. For with that construction they are meaningless.

It is a general principle of construction that when general words are thus used after particular words, the meaning of such general words is restricted to that of the particular words.

Sedgwick on the Construction of Statutory and Constitutional Law, p. 361.
Sandiman v. Beach, 7 B. & C., 96.
City of St. Louis v. Loughlin, 49 Mo., 562.
White v. Ivy, 34 Geo., 199.
State v. McGarry, 21 Wis., 496.
Williams v. Golding, L. R., 1 C. P., 69.
Pope v. Nickerson, 3 Story, 495.
Butterfield v. Arthur, 16 Blatchford, 216.
United States v. Weisse, 2 Wall. Jr., 72.
Matter of Hermance, 71 N. Y., 481.
United States v. Saunders, 22 Wall., 492.

In all these cases cited the word "other" or "others" is used before the class of which some individual is already specified; as tradesman, artificer, workman, laborer, or other person.

Sandiman v. Beach, 7 B. & C., 96.

In such cases full effect might be given both to the particular and general words. The one does not include the other. But in the section in question particulars are mentioned, and then the whole class is mentioned. The general includes the particular. Full effect can not be given to the general without rendering the particular meaningless.

A case more nearly in point is that of City of Detroit vs. Putnam, 7 N. W. Rep., 815, decided by the Supreme Court of Michigan, Jan. 12, 1881. Here it was held that a statute which made the city liable for neglect to repair any public highway, street, bridge, cross-walk or culvert, did not make the city liable for neglect to repair sidewalks. The Court say: "We have but little doubt that if the liability had been created for injuries sustained in consequence of a failure to keep in repair the highways and streets, that these terms would have included all within the limits of the line thereof, and thus the sidewalks as well as the bridges, cross-walks and culverts. The special terms used do not enlarge, but limit, the force of the general terms used."

II.

The section in question can be traced direcly to a similar section of a statute 7 Geo. II., passed in 1734. Then it was enacted "That no person or persons who is, are or shall be owner or owners of any ship or vessel shall be subject or liable to answer for or make good to any one or more person or persons, any loss or damage by reason of any embezzlement, secreting or making away with by the master or mariners or any of them of any gold, silver, diamonds, jewels, precious stones or other goods or merchandise which from and after the 24th day of June, 1734, shall be shipped, taken in or put on board any ship or vessel, *or for any act, matter or thing, damage or forfeiture done, occasioned or incurred from and after the*

said 24th day of June, 1734, by the said master or mariner, or any of them, without the privity and knowledge of such owner or owners, further," etc.

In 1786, by a statute 26 Geo. III., this limitation was extended to cases of robbery, embezzlement, and secreting away, to which neither the master or mariners were privy.

In 1813 the English law was still further extended. It was then enacted, "That no person or persons who is, are, or shall be owner or owners, or part owner or part owners of any ship or vessel, shall be subject or liable to answer for or make good any loss or damage arising or taking place by reason of any act, *neglect*, matter or thing done, *omitted* or occasioned without the *fault* or privity of such owner or owners, which may happen to any goods, wares, merchandise or other thing laden or put on board the same ship or vessel after the 1st of September, 1813, or which, after the said 1st day of September, *may happen to any other ship or vessel, or to any goods, wares, merchandise or other thing being in or on board of any other ship or vessel.* Further, etc.:"

In 1818 the Massachusetts legislature enacted, "That no ship-owner shall be answerable beyond the amount of his interest in the ship and freight for any embezzlement, loss, or destruction, by the master or mariners, of any goods, wares, or merchandise, or any property put on board of such ship or vessel, *nor for any act, matter or thing, damage or forfeiture, done, occasioned or incurred by said master or mariners without the privity or knowledge of such owner.*" In 1821 the Legislature of Maine made a similar law.

It was in the light of all this legislation that the Act of 1851 was passed. That act was passed with the avowed design, on the part of its principal promoter, Senator Hamlin, to place our commerce on the same basis as that of England. Sections 3 and 4, of that Act (sections 4283, 4284 and 4285, Revised Statutes) were substantially the English

law on the matters covered by them, as was stated by Senator Hamlin.

23 Cong. Globe, 715.

Section 3, it is said, in 2 Parson's Ad. and Sh., p. 125, was taken from section 8 of the Maine Act of 1840. It will be perceived that this section contains almost the exact language of the English Act of 1734. The liability limitation in our statute extends to embezzlement, loss or destruction caused by any person, while, in the Act of 1734, it extended only to those caused by the master or mariners. This change was evidently suggested by the English Act of 1786.

The limitation in our statute also extends to losses by collision. This change was evidently suggested by the English Act of 1813. A change, too, entirely unnecessary under the construction the subsequent words must receive to cover the claims of the petitioner. The words act, matter or thing, damage or forfeiture done, occasioned or incurred, knowledge, privity, appear in all the English and American Limitation Acts except the English Act of 1813. And it would appear certain that in each they were used in the same sense.

If those words in the Act of 1734 meant any *act, matter or thing, damage or forfeiture done, occasioned or incurred by the master or mariner, through which goods were damaged*, then clearly in the section in question they mean any *act, matter or thing, damage or forfeiture done, occasioned or incurred by some other person than the owner through which property is damaged.*

There was no decision during the operation of this law as to whether it extended to personal injuries. The first action for personal injuries against carriers of passengers was brought in 1791.

Opinion of Hubbard, J. in Ingalls vs. Bills, 9 Metc. 8.

But Lord Romilly in reviewing this Act in Glaholm *vs.* Barker, 34 Beavan, 309, says: "But to personal injuries no limit was affixed by the statute; the liability in respect of them remained as theretofore, limited only by the extent of the damages done." In the argument of the same case on appeal, L. R., 1 Ch. Ap., 225, it was stated by the counsel for the ship-owners, Mr. Hobhouse, Q. C., and Mr. Douce, that before the passage of Lord Campbell's Act, the liability of the ship-owner "for personal injuries, not ending fatally, was unlimited, and for those ending fatally he was under no liability."

This Court, in speaking of that Act in Norwich Co. *vs.* Wright, 13 Wall., 117, say: "It was enacted that no ship-owner should be responsible for any loss or damage to goods on board the ship by embezzlement of the master or mariners without his privity or knowledge, further, etc." Further on in the same case, p. 118, the Court say: "By 53 Geo. III, 1813, the liability limitation of ship-owners was still further extended to cases of loss by *negligence* of the master and mariners, and to damage done to other ships and their cargoes, including, of course, cases of collision." Now, clearly, if the terms "act, matter, thing, damage, forfeiture," in the Act 7, Geo. II, are to be taken in the sense in which they must be taken in the act to cover the petitioner's claim, they already covered cases of collision. For unless the collision occurred as an "act, matter or thing, damage or forfeiture, done, occasioned or incurred by the master or mariners," the ship-owner was not responsible, and, if it did so occur, under the construction contended for, his liability was already limited.

This Court, in the case above cited, p. 120, say: "The laws of Maine and Massachusetts seem to have limited the ship-owner's liability in cases of damage to cargoes alone," thus showing the opinion of this Court that the general terms there used, the same terms as in section 3 of the Act of 1851, were confined to the particulars enumerated in the same section.

These general words seem to have been used in a restricted sense in the English and Massachusetts statutes from which they were taken. There is an additional particular here to what there was in those statutes. Their meaning was there restricted because they followed particulars. Surely the increase of those particulars strengthen the inference of restriction.

III.

It may, however, be claimed that these general terms are to be construed in their most general sense because of the introduction of the clause "or for any loss, damage or injury by collision." If this clause extends to any loss, damage or injury by collision it will be argued that it may embrace personal injuries so occasioned, and that a construction of the succeeding general terms as meaning matters or things, *ejusdem generis* will cover all cases of any kinds of damages, whether to person or property, occasioned by foundering. In answer to this, we say that this Court in the Norwich case, p. 121, after carefully considering this clause, said that it covered "*damage by collision to other vessels and their cargoes.*" This construction would seem obviously correct from a consideration of the English Act of 1813, the preceding enumeration and the succeeding section of the Act of 1851. And if this construction is correct, the general terms gain no strength from the clause in question.

But admit, for the purpose of this argument, that that clause covers cases of damages for personal injuries. That clause alone does not cover such damages occasioned by foundering. To cover damages so occasioned, resort must be had to the succeeding general words. The respondent's argument is that the meaning of these general words is extended by the introduction of the clause in question. The claim is that these words are now to be construed to cover

any act, matter or thing lost, damage or forfeiture of the kind specifically enumerated. Construe them, then, according to that principle.

To be covered by the statute the matter or thing lost, damage or forfeiture, must be occasioned by collision, or a cause of the same kind. The petitioner's claim is for damages for loss of life occasioned by foundering. Foundering is the cause. Foundering considered as a cause is not like collision considered as a cause. To be sure they have this resemblance, each has or may have a cause back of itself. But that may be said of any damage. This branch of the argument proceeds, it will be remembered, on the theory that these general words are restricted in meaning by what goes before. Some meaning, therefore, less general than that which they would have standing alone, must be given them. Some principle, therefore, less broad than that which would include all causes of damage must be adopted to determine what is a cause similar to collision. No principle, which would make foundering and collision similar causes, can be suggested which does not cover any cause producing damage. To make them similar causes would be, therefore, to say that the general terms are unrestricted in meaning, which is contrary to the principle upon which this branch of respondent's argument proceeds.

IV.

If the general words of Section 4283 are to be taken in a sense sufficiently broad to cover the petitioner's claim, there is a conflict between this and the two succeeding Sections, 4284 and 4285. These last mentioned sections relate to the remedy for the right given in the preceding section. They manifestly point out a method of procedure only in cases of damage to property. They are to be considered in the construction of that section. Without those sections the time of estimating the value of the vessel and her pending freight would be at the time of or before the occurrence

of a loss. With them such estimate is to be made after the loss occurs.

Norwich Co. vs. Wright, 13 Wall, 120.

The Act creates a right and gives a remedy for its enforcement. It should receive, if possible, a harmonious construction. A construction which makes the right broader than the remedy, leaves a portion of the right without a remedy and is not harmonious.

The theory upon which the Act is evidently framed is, that the liability of the owner should be just what the venture is in the undertaking in which such liability occurs.

For that reason his liability is the value of the vessel and her pending freight. Pending passage money need not be contributed. The undertaking to which the limitation applies is one, then, in which the venture consists simply of the vessel and her pending freight. The liability to be limited must arise out of an undertaking in which only the vessel and her pending freight are ventured. More than the vessel and her pending freight are ventured in an undertaking to carry passengers; and hence the liability to such passengers for personal injury would not appear to be covered by the statute.

To harmonize the different parts of this Act, the limitation must be construed to extend only to damages done to property. To adopt any other construction would create a lack of harmony which would justify a reference to the journals of Congress to ascertain the legislative intention.

Blake vs. National Bank, 23 Wallace, 319.

The Act was introduced in the Senate by Senator Hamlin, as a member of the Committee on Commerce, who said: "The bill is predicated on what is now the English law and it is deemed advisable by the Committee on Commerce that the American marine should stand at home and abroad

as well as the English marine. Senators who may be disposed to look into the provision of the English law will find in the ninth, sixteenth and thirtieth volumes of English statutes the very principle contained in the bill.". Senator Hale said: "I have examined it and the English statutes, and as has been suggested the bill is an abstract of the English law in regard to this subject."

23 Cong. Globe, 332.

In speaking of sections 3 and 4 (sections 4283, 4284 and 4285 Revised Statutes), Senator Hamlin said: "These two sections are substantially the English law."

23 Cong. Globe, 715.

Throughout the whole discussion by those who favored and those who opposed the act, it was assumed to place our commerce on the same basis as that of England—pp. 715–720.

It was stated repeatedly on the argument that the design of the act was to remove the hardships of the common law by which the carrier was held to the onerous responsibility of an insurer. Bills of lading, merchants' goods, and freight, were frequently referred to, but nothing during the entire discussion was said about passengers or passage money.

The Act seems to have passed through the House without debate—pp. 776–7.

The facts that the English law at this time was that of 1813; that that law limited the liability for damages to goods on board and for damages to other vessels and their cargoes, and for nothing else; that this law of 1813 was an amendment of the law which was the model of our own; that our law took that model and extended it to cases of collision; that the expressed purpose of Congress in adopting our law was to make it like that of England; and that England, by laws passed in 1854 and 1862, limited the

liability for damages for personal injuries, whether resulting in death or not (See statutes 17 and 18 Vic., c. 104, and 25 and 26 Vic., c. 63), would seem to indicate conclusively that the limitation extends only to damages done to property.

ALFRED RUSSELL,
Att'y for Petitioner.

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ALFRED RUSSELL,
Att'y for Petitioner.

OFFICE SUPREME COURT U. S.
FILED
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SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1881.

Ex Parte WILLIAM P. SLAYTON.

Petition for Writ of Prohibition to Dist. Court, N. D. Illinois.

BRIEF FOR PETITIONER.

ALFRED RUSSELL,
Attorney for Petitioner.

DETROIT:
JOHN F. EBY & CO., PRINTERS, 46 LARNED ST. W.
1881.

SUPREME COURT OF THE UNITED STATES.

EX PARTE WILLIAM P. SLAYTON.

On the 16th of October, 1880, the steamer Alpena foundered in a gale and sank in Lake Michigan, and within the boundaries of the State of Michigan. The owner of the lost steamer, the Goodrich Transportation Company, which is a corporation organized under the laws of the State of Wisconsin, before the commencement of any suit against the company or the vessel, filed a petition in the District Court for the Northern District of Illinois in Admiralty, to limit its liability. After filing its petition it made a formal transfer of title to the vessel lying at the bottom of Lake Michigan, in the State of Michigan, to trustees appointed by the Court. The petitioner and others having claims against the company for loss of life, appeared specially in the cause and excepted to the jurisdiction of the Court, and the exceptions were overruled.

I.

Section 4283, U. S. R. S., provides that the liability of the owner shall not exceed his interest in the vessel in cases of loss or damage happening without his privity or knowledge.

Michigan. The proceeding is in the nature of a proceeding *in rem.*

The Providence Steamship Co., 6 Ben., 124.

It is only by regarding it in this light that the court could proceed by publication. But the *res* is beyond the jurisdiction, and the paper transfer of title by the owners, made within the jurisdiction, cannot operate to bring it within the power of the Court. The proceedings could have been launched in California or Florida with as much show of jurisdiction as in Illinois.

The proceedings are all beyond the jurisdiction of the Court, and are null and void.

III.

The District Court has no jurisdiction to adjudicate claims for loss of life, and the Court should be prohibited from proceeding further in regard to them.

The writ of prohibition lies to prevent courts from acting in *excess* of their jurisdiction, and will lie to a part and not to the whole.

Hudson v. Judge, Supr. Ct., 42 Mich., 239.
8 Bac. Ab., Tit. Prohibition, 206.
3 Blk. Com., 111.
7 Comyn's Dig., Tit. Prohibition.
Appo v. People, 20 N. Y., 531.
People v. Seward, 7 Wend., 518.
Arnold v. Shields, 5 Dana, 21.
Washburn v. Phillips, 2 Met., 299.
Ex parte Hamilton, 51 Ala., 62.
Ex parte Blackburn, 5 Pike, 22.
High Ext. Rem., §§ 773, 765.

It is clear that Congress, in passing the act, did not contemplate any losses except those of merchandise. A reading of the whole act, and the use throughout of only such terms as are usually applied to merchandise and goods

shipped, such as "freight," etc., shows this to be the fact. This is a legitimate argument.

Am. Trans. Co. v. Moore, 5 Mich., 285.

The further consideration that Congress probably intended to relieve carriers by water from the stringent rules of the common law which made them insurers of goods, rather than to require a less degree of care in the carriage of passengers, in which case the liability rests upon just and equitable grounds, confirms the view here taken of the scope of the act. This court has said, and it is a general canon of construction, that the entire act must be considered together, and effect given to it as a whole, rather than by a separate construction of separate sections.

Norwich Co. v. Wright, 13 Wall, 128.

Applying these principles, section 4283 is the only one in which it can be claimed that the language will cover cases of death, and it is only by straining the language there used that it includes the cases mentioned. The wording of the section is: "The liability of the owner of any vessel, for any embezzlement, loss or destruction, by any person, *of any property, goods or merchandise*, shipped or put on board of such vessel, or for any loss, damage or injury, *by collision*, or for any act, matter or thing lost, damage or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner in such vessel and *her freight* then pending."

The language of this section is such as applies only to losses of goods, and the general words following the enumeration of "property, goods or merchandise," on the principle of *ejusdem generis*, should refer only to losses of property of a like nature.

5 Mich., 386.

In sections 4284 and 4285, which provide for averaging losses, and which are the sections relied upon as the basis of this petition, the language expressly negatives any idea that they apply to losses other than of property. The reading of section 4284 is: "Whenever any such embezzlement, loss, or destruction is suffered by *several freighters or owners of goods, wares, merchandise, or any property whatever*, in the same voyage, and the whole value of the vessel and her freight for the voyage is not sufficient to make compensation of each of them, they shall receive compensation from the owner of the vessel in proportion to their respective losses; and for that purpose *the freighters and owner of the property* and the owner of the vessel, or any of them, may take the appropriate proceedings in any court for the purpose of apportioning the sum for which the owner of the vessel may be liable among the parties entitled thereto."

Section 4285 provides that, "It shall be deemed a sufficient compliance on the part of such owner with the requirements of this title, *relating to his liability for any embezzlement, loss or destruction of any property, goods, or merchandise*," if he shall transfer his interest to a trustee, etc.

These two sections refer solely to losses of property, and, that Congress must have intended that they should be confined to such losses, receives additional support from the fact that the words in section 4285, "*relating to his liability for any embezzlement, loss or destruction of any property, goods or merchandise*," are not found in section 4 of the act of 1851, but were inserted in the Revised Statutes, presumably to more clearly define the scope of the act. The decisions in the 6th of Benedict and the Sea Bird, holding that the act included the loss of life, were before the amendment of the statute.

In *The Epsilon*, 6 Ben., 387, Benedict, J., held that the meaning to be given to the general terms used in section 3 was to be governed by the language of section 4, providing

for the transfer of the owners' interest to trustees, and that the terms of section 4 were broad enough to include losses arising from death.

Possibly this might have been true, as the act stood. But applying the same reasoning to the act as amended, the general language used in section 4283 must be confined to losses of property, goods or merchandise.

U. S. vs. Bowen, 100 U. S., 508, 513, Atkins vs. Dodge, 101 U. S., 36, and The Marine City, 6 Fed. R., 414, hold that the language of the Revision must govern without regard to the old law.

It seems clear that there is no jurisdiction of the present suit at all, but if the Court should come to a different conclusion, the petitioner is certainly entitled to a writ restraining the District Court from adjudicating the claims arising from death.

ALFRED RUSSELL,
Attorney for Petitioner.

SUPREME COURT U.S.
FILED
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SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1881.

Ex Parte WILLIAM P. SLAYTON.

Petition for Writ of Prohibition to Dist. Court, N. D. Illinois.

Second Supplementary Brief for Petitioner.

ALFRED RUSSELL.
Attorney for Petitioner.

DETROIT:
JOHN F. EBY & CO., PRINTERS, 46 LARNED ST. WEST,
1882.

SUPREME COURT OF THE UNITED STATES.

EX PARTE WILLIAM P. SLAYTON.

As a more detailed argument of the questions raised in the brief filed with the petition, this second supplementary brief is submitted.

The proceedings in the District Court may be briefly stated:

October 16, 1880, the steamer Alpena, owned by the Goodrich Transportation Company, a Wisconsin corporation, having a number of passengers on board, and freighted with a cargo of goods, on her trip from Grand Haven, Michigan, to Chicago, Illinois, foundered and sank in Lake Michigan, and in the State of Michigan, causing the death of all the passengers on board, among whom was petitioner's intestate. The vessel and cargo still remain where they sank, except certain remnants, which were washed ashore in the State of Michigan. November 10, 1880, a suit was commenced in the Court below against the owner of the Alpena above mentioned, to recover damages for a collision occurring September 10, 1880, between the schooner F. B. Stockbridge and the steamer Alpena. January 3, 1881, the said shipowner filed the petition Exhibit A in the Court below. The petition contains a statement of the above facts, a further statement of facts which, if true, entitles it to the benefit of the act, both in case of the collision and foundering, and prays either an appraisal of the vessel and pending freight, to the end that the value may be paid into Court, distributed among the parties entitled thereto, and the shipowner declared exempt from further liability, or *the appointment of a trustee to whom*

might be transferred the interest of the shipowner in the steamer and pending freight, and that the [redacted] be held exempt from further liability on account of the collision and loss. January 6, the said Court granted the last prayer above mentioned, and appointed such trustee. January 11 the trustee reported an assignment of the vessel and pending freight, and the Court ordered the issuance of a monition to be served by publication, Exhibit D, which monition was duly issued and served as directed in said order, Exhibit E. April 8, petitioner Slayton, a claimant for damages against the said shipowner for death of his intestate, as before mentioned, appeared under protest in the Court below, filed his claim, and excepted to said petition for want of jurisdiction, Exhibit B. July 15, after an argument of these exceptions, they were overruled in an opinion, a copy of which is attached to the answer.

The shipowner was denied relief against any claim arising from the collision with the schooner F. B. Stockbridge. In the course of the opinion, page 9, the Court stated that the remnants, "so far as recovered, are within the jurisdiction of this court." In this the Court was certainly in error. The petition, page 4, states that such remnants came ashore in Michigan. It states nothing to show that they ever were in any other place. Upon the facts therein stated the Court was asked to act, and it could act upon no other. The remnants were not within the jurisdiction of the Court. As a matter of fact, these remnants and the vessel itself are now held under an attachment in admiralty issued from the District Court for the Western District of Michigan, at the suit of a claimant for damages from this same foundering.

After these exceptions were overruled, the Court directed the petitioner to answer the petition.

September 13 an answer under protest, Exhibit C, admitting the facts stated in reference to the ownership, place of loss, location of vessel, cargo and remnants, but denying the facts which entitled the shipowner to exemp-

If the case is covered by the statute, the owner is liable only to a certain amount. He can assign the interest which, tion, was filed by the petitioner. To this answer a replication was filed. The issue thus made is whether the shipowner is entitled to the benefit of the Limited Liability Act as respects the claims growing out of the foundering of said Alpena. If it is entitled to the benefit of that act, it is not personally liable for these claims. If not entitled to the benefit of that act, it is personally liable. The issue to be determined, then, is whether the shipowner is personally liable on these claims. That issue the court below is proceeding to determine.

I.

No authority is given to the Admiralty Court to determine the question of the shipowner's liability. No jurisdiction is given to that Court to determine, in a proceeding commenced by such shipowner, the question of his personal liability for the claims growing out of any disaster. To make such a determination, the Court must pass upon all claims so arising. Wherever the claimant resides, in California or in Maine, he must go to Chicago and contest these proceedings or lose his claim. He is made defendant in this suit, and it is sought to deprive him of his property, his claim. A law authorizing such a course of procedure would be "an oppression upon suitors too intolerable to be endured."

Ex parte Graham, 8 Wash., 459.

A burden so intolerable that its constitutionality was questioned by Judge Curtis in his argument in the case *United States* [illegible] *Pacific* [illegible] *of Curtis*, 432. [illegible]

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sum for which the owner of the vessel may be liable among the parties entitled thereto." Under this section, when the case is within the statute, and the aggregate losses exceed the value, the appropriate proceedings may be taken; not to determine whether the case is within the statute; not to determine whether the owner is personally liable, but *to apportion the sum for which he is liable.*

Section 4385 reads: "It shall be deemed a sufficient compliance on the part of such owner, etc., if he shall transfer his interest in the vessel and freight for the benefit of such claimants to a trustee to be appointed by any court of competent jurisdiction, etc., from and after which transfer all claims and proceedings against the owner shall cease."

Before any adjudication is had, certain claims against the owner are to cease. What claims? By the statute the owner still remains liable to the full extent for damages caused by his own negligence and for any act, damage or forfeiture of another done, occasioned or incurred with his privity or knowledge. Surely claims for which he is personally liable cannot cease by such an assignment. If he is personally liable, he must pay the full damage. And whether he is so liable or not can only be determined by a judicial adjudication. *Cooley Const. Lim., 362, 404.* On the other hand, there is a class of claims for which the owner is not liable beyond his interest in the property so turned over.

The claims thus referred to as ceasing on such an assignment would seem clearly to be those which are coextensive with the extent of their lien; those, in other words, embraced by the statute.

If the case is covered by the statute, the owner is liable only to a certain amount. He can assign the interest which measures his liability for the benefit of the claimants or he can bring into court an equivalent fund and have that distributed among them. The assigned interest or the fund is, then, the only thing against which claims exist. That is the *res*. To distribute that is what these remedial sections authorize the Court to do. To entertain proceedings for its distribution is the jurisdiction conferred on the Court, and the only jurisdiction conferred on the Court. *If the Court has jurisdiction to decide the question of the personal liability of the owner under this statute it must be because that question must be decided in the distribution of the res. If that distribution can be made without deciding the question of personal liability, then jurisdiction to decide that question is not given by this statute.*

The res can be distributed by a proceeding in rem. That seems to have been the character of the proceedings contemplated by the statute.

Norwich Co. vs. Wright, 13 Wall., 123-126.

That certainly is the character of the proceedings contemplated by the General Admiralty rules. They provide for bringing in parties by service, by publication and through the postoffice (Rule 54). The one thing essential seems to be the res. No binding personal decision can be made in such a proceeding.

Cooley Const. Lim., 403-406.
Webster vs. Reid, 11 Howard, 437.
Pennoyer vs. Neff, 95 U. S., 733.
Settlemier vs. Sullivan, 97 U. S., 444.

assignment of the res. On this assignment the Court is

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proceeding the question of the personal liability of the ship-owner. If the case is within the statute, the determination of the existence and extent of claims and the apportionment of the *res* is a fit occasion for the exercise of a proceeding in *rem*.

Norwich Co. vs. Wright, 13 Wall., 123.

And it was to carry out such a proceeding that the remedial sections of the act and the rules were framed.

Hill Mnfg. Co. vs. Providence, etc., Co., 125 Mass., 292.
S. C., 113 Mass., 495.
Knowlton vs. Providence, etc., Co., 53 N.Y., 76.

II.

The statute gives to the petitioner the right to have the question of the personal liability of the owner determined by a court of common law.

Sections 563 and 711 Revised Statutes save to every suitor in admiralty the right of a common law remedy where the common law is competent to give a remedy. The common law is competent to give a remedy where the question is one of personal liability.

Leon vs. Galceran, 11 Wall., 191.

The question of whether the case is covered by the statute is also the question of whether the owner is personally liable. He may be personally liable to a limited extent when the case comes within the statute, but this is a liability which would cease on a proper transfer of the res or the payment of a fund into court. Until that transfer

or payment the owner remains personally liable, and any court having jurisdiction can adjudicate the questions involved.

Norwich Co. vs. Wright, 13 Wall., 123-126.

After such transfer or payment, if the case comes within the statute, the owner is not personally liable. On an issue of personal liability the decision in such a case must be in his favor. The sole question remaining, then, is that of the personal liability of the owner. And this the petitioner has a right to have a court of common law determine. If that issue is determined in favor of the shipowner the common law clearly affords him a competent remedy. If decided in favor of the petitioner, that law can just as clearly give a remedy.

But the court below is proceeding to determine this question of the personal liability of the owner. It is proceeding to render a final adjudication of that question. If it can render a final adjudication it can prevent the petitioner's obtaining relief in a court of common law; it can take from him his statutory right of resorting to a court of common law. This the District Court has no power to do. It has only such jurisdiction as the statute gives it. And clearly it has not jurisdiction to determine against the will of the petitioner a question which the statute says he may have determined by another court.

III.

No statute could give the Court below jurisdiction to determine the issue before it. The question that Court is determining is whether the shipowner is personally liable or not. That, as we have seen, is a question that can be determined only as a personal question.

The one thing giving the Court below jurisdiction is an assignment of the res. On this assignment the Court is

asked to decide that the owner is not liable personally for any claims resulting from the cause which occasioned the wreck. As well might the petitioner assign his lien on the res to a trustee appointed by a Michigan court, and ask for a decree of twenty thousand dollars against the shipowner for the damages resulting from the death of his intestate. On the basis of this assignment the Court below issued the monition, and it was served on all the parties in interest by publication.

No such service can warrant a binding personal decree. No statute could authorize a personal decree on such service. See authorities before cited.

The appearance under protest waived nothing.

Harkness vs. Hyde, 98 U. S.. 476.

In the case before it, the Court below is also proceeding to determine whether the petitioner has any claim against the shipowner by reason of the death of his intestate. That claim is owned by the petitioner in his representative capacity solely by virtue of his appointment as administrator under the laws of Michigan. He can not in such character prosecute or defend a suit in the State of Illinois.

Dennick vs. Railway Company, 103 U. S., 19.

Can the Court below adjudicate the claim held by such administrator? Upon this point we quote the language of Judge Curtis in his argument in the case before referred to, where a statute conferred on the Court such a power (*Memoirs of Curtis, Vol. 2, p. 432*): "And when you call upon an administrator or executor to come here and answer to a suit, you call upon him to do what he has no power to do. And, what is more, you call upon him to do what the law says he has no power to do. There can not be found anything in the Constitution of the United States, special or general, which will enable Congress to pass an act increasing the power of executors and administrators appointed by the States."

Clearly the petitioner can not be bound by a proceeding in which he can not appear.

IV.

The court below has not jurisdiction to apportion the assigned interest.

Section 4385, under which these proceedings were instituted, provides that the shipowner may assign his interest in the vessel and pending freight *to a trustee appointed by a court of competent jurisdiction.* This section obviously neither enlarges nor diminishes the jurisdiction of any court. The competency of a court's jurisdiction is not determined by it. That is left to be determined by the principles by which jurisdiction is always determined. The proceedings below and those authorized by the statute and rules are proceedings *in rem.*

The competency of the jurisdiction must be determined, then, by the principle by which jurisdiction in rem is determined. That principle is the actual or constructive possession of the res. The court must have possession of the fund. *Norwich Co. vs. Wright, 13 Wall., 124.* The res must be within the territorial jurisdiction of the court. *Propeller Commerce, 1 Black, 581.* What is the res? The value of the vessel was not paid into the court below.

The shipowner's interest in the vessel and freight then pending was turned over to a trustee. The court then proceeded to pass upon all claims on such interest and to apportion it among the claimants it decides entitled thereto. It is apparent, then, that such transferred interest is the res. The location, then, of such transferred interest determines the competency of the jurisdiction of the court. How is this to be ascertained?

The location of the vessel is easily ascertained. As a chose in action the freight pending can have no other loca-

tion than that of the residence of the freighter or the residence of the shipowner.

2 Kent's Com., 406.

The residence of the shipowner is in Wisconsin; the residence of the freighter is not known. If either is to be considered in determining jurisdiction the court has not jurisdiction.

The freight pending is a lien on the cargo, in carrying which it was earned. That cargo, to the extent of such pending freight, is subject to a lien on the part of those suffering damage by the foundering.

1 Parsons Sh. & Ad., 532, N. 2.

The assignment of such pending freight for the benefit of those having such a lien would certainly carry with it that lien. To the extent of that lien an interest in the cargo is assigned.

That lien may be enforced by holding the cargo. It can be effectually enforced in no other manner. As a chose in action it could not be enforced against the freighter, if, to obtain his goods, he is forced to discharge the lien by payment to one holding the cargo under an attachment against the shipowner. The location of the cargo would seem, then, to be the location of the pending freight. At any rate, so far as that pending freight has any location to give a court jurisdiction *in rem*, its location must be with the cargo.

The Court of competent jurisdiction, then, to appoint a trustee must be that within whose jurisdiction the vessel and cargo are situated.

If Rule 57 of the General Admiralty Rules changes this principle, it is a sufficient answer to say that that rule, taken in connection with Rule 54, only authorizes these proceedings to be instituted in a district where the owner is sued for a claim arising from the same cause, which is not the case here. It may not be out of place to remark on

that rule, that it would seem to mean only that the shipowner might resort to the court in which he is sued to obtain the remedy provided in the rules. This he might obtain by paying the value of the vessel and pending freight in court in a case where the vessel itself is not within the jurisdiction of the Court, and by assigning his interest when it is. This distinction would seem to be recognized by the statute, which authorizes *the appropriate proceedings to be taken in any Court*, while the trustee to whom is assigned the vessel and pending freight must be appointed by a *Court of competent jurisdiction.* The assigned vessel and cargo, and the parts washed ashore, were, at the time of the assignment, as appears from the record, without the jurisdiction of the Court below, and within the jurisdiction of the District Court for the Western District of Michigan.

Revised Statutes, § 538.

It is claimed in support of these proceedings that the assignment of the interest gives the Court jurisdiction to proceed in rem. That principle would make the commencement of suit the element conferring jurisdiction. It would give no court jurisdiction until suit was commenced. It would give a court exclusive jurisdiction by the commencement of suit. It would disregard the statute. It would give *any court* to which application is made authority to appoint a trustee, while the statute allows his appointment only by a *court of competent jurisdiction.* It would recognize no principle from the location of subject matter or res, or from the location or service of parties, which in every other case determines jurisdiction. It would allow the shipowner to confer jurisdiction on a court. It would allow him to exercise an authority that only Congress can exercise. See argument of Judge Curtis, before referred to—*Memoirs of Curtis, Vol. 2, pp. 433 and 434.* A principle involving such an absurdity needs no other refutation.

[redacted] to say that [redacted] and bring the proceeds into Court. That would make no difference unless those proceeds could stand as the res. That would necessitate a change of the res. That when a Court has no jurisdiction of the res proceeded against another res can be substituted and the proceedings sustained, is a doctrine too absurd to merit refutation.

By a change of res the single distinctive character of a proceeding in rem is gone. The proceeding would become another proceeding. If the Court has not the competent jurisdiction to appoint a trustee, its order appointing him was void, the assignment to him void, and the assigned property still the property of the shipowners. There is, therefore, no room in fact for the assumption that he can bring the proceeds of the vessel in Court.

V.

A writ of prohibition was recently denied by this court in the case *Ex parte Frederick Gordon*. There the District Court was proceeding to determine a question which it had the jurisdiction to determine. The petitioner for the writ claimed that the question involved could be determined only in his favor. That claim was at most doubtful.

In this case the court below is proceeding to determine a question of personal liability without personal service; it is proceeding to adjudicate personal claims held by those who cannot contest that proceeding; it is proceeding to determine a question of personal liability without any statutory jurisdiction; it is proceeding to determine a question within the jurisdiction of a common law court; it is proceeding in rem

without having jurisdiction of the res; it is proceeding under the act without having the jurisdiction required by the rules; it is proceeding in a case, in which, at most, it has only jurisdiction to adjudicate claims covered by the statute, to determine the validity of claims for death injuries not covered by the statute.

It has no jurisdiction to determine any of these questions in favor of or against the petioner.

The objections urged in this court to the jurisdiction of the court below are covered by the objections there made, Exhibit B. And, though no objections had been raised there, the writ should issue if the court has not jurisdiction.

De Haber vs. Queen of Portugal, 17 Q. B., 214.
Wadsworth vs. Queen of Spain, Id., 218.
Cooke vs. Gill, L. R., 8 C. P., 107.
Jacobs vs. Brett, L. R., 20 Eq., 1.
Worthington vs. Jeffries, L. R., 10 C. P., 379.
Serjeant vs. Dale, L. R., 2 Q. B. Div., 558.
Hudson vs. Tooth, L. R., 3 Q. B. Div., 46.
Martin vs. Mackonochie, 3 Id., 730.

ALFRED RUSSELL,
Attorney for Petitioner.

SUPREME COURT U.S.
FILED
DEC 12 1881

Supreme Court of the United States.

October Term, 1881.

EX PARTE:
IN THE MATTER OF
WILLIAM P. SLAYTON, PETITIONER.

No. 7. Original.

Petition for a Writ of Prohibition.

Now comes Henry W. Blodgett, judge of the District Court of the United States for the northern district of Illinois, by A. T. Britton and J. H. McGowan, attorneys of this court, and for cause why a writ of prohibition should not issue restraining and prohibiting him from proceeding further or from taking jurisdiction of petitioner's claim, and from entering any decree except to dismiss the petition, in the matter of the petition of the Goodrich Transportation Company to limit the liability of said Company *in re The Alpena*, filed in said District Court, showeth—

That the facts set forth in the petition of said Slayton, so far as the same relate to proceedings in the said District Court of the United States for the northern district of Illinois, in pursuance of the petition of the said Goodrich Transportation Company for the limitation of liability, are substantially true.

That on the 3d day of January, 1881, said Goodrich Trans-

portation Company filed its petition in said District Court, in Admiralty, to limit the liability of said Company by reason of the loss of the steamer *Alpena*, and that on the 6th day of January, 1881, in accordance with one of the prayers of said petition, an order was made by said court appointing Albert T. Spencer trustee, to whom might be transferred said *Alpena* and her pending freight.

That on the 11th of January, 1881, said trustee reported that he had received an assignment of said steamer and its pending freight, and that the court thereupon ordered that a monition issue against all persons claiming any damages against said steamer or the owner thereof for any embezzlement, loss, destruction, damages, or injury; citing them to appear before said court and make due proof of their claims on or before the first Monday in May, 1881, which said monition was duly issued and returned, served according to the direction of said court.

That on the 8th day of April, 1881, said petitioner, Slayton, filed a claim against said Goodrich Transportation Company, under protest, and excepted to the petition of said Company for want of jurisdiction.

That on the 15th day of July, 1881, a hearing was had on said exceptions, and the same were overruled, and all the claimants were directed to answer said petition of said Transportation Company.

That subsequently thereto, said petitioner, Slayton, together with the other claimants, respectively, filed their answers in said court, and replications thereto were filed; also, that there has been paid to the trustee, so appointed by said court, the freight pending at the time of the loss of said steamer *Alpena*.

That in overruling said exceptions and directing claimants to answer said petition, the court gave its reasons in full in an opinion which is herewith submitted as an answer to show

cause why the writ of prohibition prayed for by the said petitioner, Slayton, should not issue.

"In this case the Goodrich Transportation Company alleges that it is the sole owner of the steamer *Alpena*, her engines, tackle, apparel, and furniture. That such steamer was a vessel of upwards of twenty tons burden, duly enrolled and licensed for the coasting trade, and employed in the business of commerce and navigation between ports and places in different States and Territories, upon the lakes and navigable waters connected therewith.

"That on the 16th day of October, 1880, upon the waters of Lake Michigan and within the admiralty and maritime jurisdiction of the United States, and while on a voyage from the port of Grand Haven, in the State of Michigan, to the port of Chicago, in the State of Illinois, with a cargo consisting of goods, wares, and merchandise and passengers, said steamer *Alpena*, in a severe gale, foundered and sunk with all her said cargo and passengers, officers, and crew on board, without the fault or neglect of duty of any of said officers or crew; and that such foundering, loss of life and cargo was occasioned without the design, neglect, privity, or knowledge of the petitioner or any of its officers or agents. That said steamer was, when she entered upon said voyage, in good seaworthy condition, and properly officered, manned, and equipped.

"That said steamer, her engines, tackle, apparel, and furniture, except some of the upper portion of her cabin, her piano, a few cabin doors, two small boats, and a piece of her main deck with the capstan attached, lies sunk in the waters of Lake Michigan, as nearly as petitioner can ascertain, off or south of the town of Holland, in the State of Michigan.

"The petitioner further states that the owners and consign-

ers of goods on board said steamer were very numerous, and the petitioner has reason to believe that numerous suits may be brought by the owners of said cargo against the petitioner, as owner of said steamer, for the loss of such cargo, and also that suits will be brought against petitioner to recover damages occasioned by the loss of the lives of the passengers and crew of said steamer, and that the aggregate of the claims for said losses will greatly exceed the value of petitioner's interest in said vessel.

"It is further alleged that a libel *in personam* was filed in this court on the 10th day of November last, against petitioner, by Louis Hutt, as owner of the schooner *Stockbridge*, to recover damages alleged to have been sustained by said Hutt by reason of a collison between said schooner and said steamer on the 10th day of September, 1880, which suit is now pending.

"On the filing of this petition an order was entered that petitioner convey all its right, title, and interest to whatever remained of said steamer, her engines, boiler, machinery, tackle, boats, apparel, and furniture, and freight pending at the time of the loss of said steamer, to a trustee named in said order, for the use and benefit of any and all persons having any claims against said steamer or said Company as the owner thereof.

"And it having been subsequently reported to the court that such conveyance had been duly made, a monition was, by order of the court, issued against all persons claiming any damage against said steamer, as the owners thereof, for any loss, destruction, or injury, citing them to appear and make due proof of their claims, etc.

"On or before the return day of this monition a large number of claimants appeared specially, 'not submitting to the 'jurisdiction of the court, but protesting against the same, 'solely for the purpose of objecting to the jurisdiction of

'the court,' and excepted to the sufficiency of the petition, and to the jurisdiction of the court in the premises.

"These exceptions, which are twelve in number, resolve themselves practically into two questions:

"1st. Can the liability of the owner of the steamer be limited, under the law, to any loss or damage except that occurring on the last voyage, or the voyage in which the steamer was lost.

"2d. Does the petition show sufficient facts to clothe this court with jurisdiction to apportion the value of the owner's interest among the several persons who suffered damage on the voyage in which the steamer was sunk.

"As to this first question, it was conceded on the argument that the steamer was, during the season of 1880, up to the time of her loss, engaged in running regular daily trips or voyages between the ports of Chicago and Grand Haven, on Lake Michigan, and that the collision between the steamer and the schooner *Stockbridge* occurred on a trip over a month prior to the commencement of the trip in which the steamer foundered and sunk.

"I am clearly of opinion that the casualties or losses of different voyages cannot be aggregated or grouped together, say at the end of a season, or when a final catastrophe ensues, and all the losers be cited in to share what has been saved from shipwreck or other disaster, together with the pending freight, and have a decree entered exonerating the owners from personal liability. It seems to me that each voyage or trip—each separate journey which the ship makes from one port to another—must be treated as a separate venture, involving its own particular hazards, losses, and earnings, and that when each such voyage is ended it is for the owner to decide whether the losses have been such as to make it expedient for him to invoke the protection given by this act of Congress. If he does not decide to do this, but sends

his ship upon a new voyage, he thereby concedes his personal liability for the damages incurred on the past voyage.

"The owners, freighters, and passengers on any particular voyage may be said to have a common interest for that voyage. They may be compelled to contribute for jettisons made for the common safety under certain circumstances. But there is nothing in common between the freighters and passengers of different voyages. Each shipper or passenger may perhaps be held to have had some personal knowledge or information as to the seaworthiness of the ship, or the skill of her officers or crew, on the voyage in which he was interested, and to have acted on that knowledge to such an extent as in some degree to affect his and the owner's relative rights; but no such knowledge can be predicated of any other voyage, and it would certainly seem to have been beyond the intended scope of this law that, after a series of losses happening on different trips or voyages, no one of which was of sufficient consequence to induce the owner to seek the benefits of this law, he can be allowed to combine them and obtain immunity from personal liability. The language, as well as the evident reason of the statute, shows that this proceeding can only be had for the purpose of apportioning the owner's interest between several persons who have suffered 'losses on the same voyage.'

"I am therefore of opinion that the petitioner cannot by this petition obtain relief as against the suit for collision with the schooner *Stockbridge*.

"As to the second question. It is objected that under Admiralty rules 54, 55, 56, and 57, promulgated by the Supreme Court for the purpose of prescribing and regulating the procedure under this law, the court cannot entertain a petition by the owner for an apportionment of his interest in the vessel among the several sufferers, and for a limitation of his liability, until some suit has been commenced for a loss, de-

struction, damage, or injury sustained by one or more of such sufferers, and then such petition must be filed in the district court of the district where such suit has been commenced. In other words, the position of these claimants is, that inasmuch as this suit for collision with the *Stockbridge*, now pending in this court, is not for a damage accruing on the final or last voyage of the steamer, that that suit does not aid or confer jurisdiction, and the petitioner not showing that any libel had been filed in this court on suit brought in this district prior to the filing of the petition this court has no jurisdiction in the premises.

"It must be conceded, I think, that if this court only has jurisdiction of this subject-matter and parties by virtue of the rules in question, then there is much force in the position of these respondents. But it seems to me that it was not the intention of Congress to suspend the right of the ship-owner to invoke the provisions of this loss until suits or libels *in personam* should be actually instituted against him. The language of the statute is: 'And the owner of the vessel '* * * may take the appropriate proceedings in any 'court for the purpose of apportioning the sum for which 'the owner of the vessel may be liable among the parties 'entitled thereto.' Here is no intimation that the owner must wait until he has been sued before he can 'take the 'appropriate proceedings in any court.' While, from the nature of the owner's liability and the scope of the relief furnished by this law, it would seem that proceedings should be taken while the testimony necessary to establish the facts which secure immunity to the owner is available.

"Rule 57 says: 'The said libel or petition shall be filed, 'and the said proceedings had in any District Court of the 'United States in which said ship or vessel may be libelled 'to answer for any such embezzlement, loss, destruction, 'damage, or injury; or if such ship or vessel be not li-

'belled, then in the District Court for any district in which 'the said owner or owners may be sued in that behalf.'

"There is an obvious convenience, if a libel has been filed, or suit brought for any such loss, in requiring the owner to go into the same court to take the steps which shall limit his liability, because this brings all the claimants, both those who have sued and those who have not, together. But suppose libels filed or suits brought simultaneously in different courts, against the same or different owners, which might often happen, which court, then, is to have jurisdiction of the proceedings to limit liability? All the authorities now, I think, concur in the conclusion that the measure of the ship-owner's liability is the value of the ship immediately after the loss or damage complained of. If the loss occurs by the beaching of the vessel, it is her value as she lies upon the beach; if it occurs by the sinking of the vessel, it is her value and the value of her belongings as she lies sunken. Now, in order to save what is thus left for the benefit of shippers and the owner, it is necessary, in almost every conceivable case, that immediate steps be taken to sell and convert the property into money, to be held for those entitled to apportionment, and this can only be done by some appropriate proceeding in court, without delay. What is available may be perishable, or need immediate care, and the owner, by acting without the direction or sanction of a court in that regard, might at least hazard, if he did not lose, his right to protection under the law. So, too, the vessel might be in condition to be repaired, and her value for the purposes of reparation would measure the owner's liability to his shippers. If he repairs before this value is properly ascertained by appropriate proceedings in some court under this law, he runs the risk of losing all the protection the law affords him.

"It seems, therefore, quite satisfactory to my mind that the

Supreme Court did not intend by its rules to say that no proceeding to apportion the share of each loser in the value of the vessel should be had until some one of the losers should have commenced a suit, but the court only intended to say that if the owner delayed such proceedings until a suit had been commenced, then he should commence such proceeding in the District Court where such suit was commenced; but if the shippers whose property has been lost or damaged by a shipwreck or other disaster to which the owner is not privy do not see fit to commence suit at once, I can see no reason or principle in the law itself which shall compel the owner of the vessel to lie silent until perhaps his testimony may be lost, or it becomes either impossible or difficult to estimate the value of his interest in the vessel, and only ask the aid of the court when suit is begun against him, which may be any time before bar of the Statute of Limitations.

"I may also add that the language of the last clause of the 57th Rule above quoted does not literally or necessarily imply that a suit must have been brought in order to confer jurisdiction. The language is just as susceptible of the construction that this proceeding, if no libel has been filed against the ship, may be commenced in the District Court of any district in which the owner is liable to be sued. That is, if the owner is liable to be sued in the district in which he resides he may commence this proceeding in the District Court of such district, if no libel has been filed against the ship elsewhere.

"In this case, the remnants of this vessel, so far as recovered, are within the jurisdiction of this court; the freight pending has been paid to the trustee appointed. The sunken hull and machinery may not be within the territorial jurisdiction of the court, but the title, wherever they are, has been conveyed to the trustee.

"I therefore conclude that this court has jurisdiction to en-

tertain this proceeding although no suit had been brought in this court or district by any one who would be bound by this proceeding at the time this petition was filed.

"All the claims presented so far, excepting that of Hutt for collision with the *Stockbridge*, are by administrators of persons whose lives were lost by the wreck of the steamer, and they make the further question that the act of Congress does not protect the vessel owner from liability for loss of life. I do not consider that the character of these claims cuts any figure in determining the question of the jurisdiction of this court over this petition, because if liabilities of this character are not covered by the act of Congress, then no order of the court in this matter can affect them.

"I, however, had this question before me in the case of the *Sea Bird* a few years since, and came to the conclusion that this class of claims was within the act, and no light which has been thrown on the subject by later decisions and the discussions of this case has changed my view in that regard.

"Most of the statutes in this country giving a right of action for death caused by negligence, and notably those of Illinois and Michigan, one of which must control in this case, have been substantially copied from Lord Campbell's Act, as it is called in England, and which was enacted prior to the act of Congress limiting liability of ship-owners, and proceed upon the principle that the heirs, executors, and administrators of the person whose life is lost by the negligence of another have a pecuniary interest in such life. In some of the States the amount recovered goes directly to the widow and next of kin, and in others it goes into the general assets, so that the persons entitled to maintain an action may be said to have a 'property' interest in the person whose life is lost, and it is because of this property and pecuniary interest that a right of action is given.

I do not look upon these suits as penal suits, punishing the owner for his negligence, but only as a remedy for the recovery of the pecuniary interest which the survivors of the person whose life is so lost have in his life."

HENRY W. BLODGETT,
Judge U. S. Dist. Court
for the Northern Dist. of Illinois,
By J. H. McGOWAN,
A. T. BRITTON,
Attorneys.

Supreme Court of the United States.

OCTOBER TERM, 1881.

Ex parte WILLIAM P. SLAYTON.

Petition for Writ of Prohibition to the District Court for the Northern District of Illinois.

BRIEF FOR RESPONDENT.

A. T. BRITTON,
J. H. McGOWAN,
Atty's for Goodrich Transportation Co.

WASHINGTON, D. C.
GIBSON BROTHERS, PRINTERS.
1882.

Supreme Court of the United States.

October Term, 1881.

Ex parte WILLIAM P. SLAYTON.

The grounds on which this writ is asked are, apparently:

First. That by reason of the rules of this court (Rules 54 and 57 of the Supplementary Rules of Practice in Admiralty) the District Court at Chicago acquired no jurisdiction, and is proceeding without authority.

Second. That the District Court for the Northern District of Illinois can have no jurisdiction outside its territorial limits. The claimant and the owner being non-residents of that district, and the vessel having gone down in Michigan waters, the court could take no jurisdiction.

Third. That the District Court has no jurisdiction to adjudicate claims for loss of life.

I.

The steamer "Alpena" went to the bottom of Lake Michigan, during a storm, with all on board, October 16, 1880.

On the 3d day of Jan'ry following (1881) the Goodrich Transportation Company, as owners of the vessel, filed its petition for the limitation of its liability.

On the 6th of January the court made an order appointing Albert T. Spencer, trustee, to whom might be transferred said "Alpena" and her pending freight.

On the 11th of January said trustee reported that he had received an assignment of said steamer and its pending

freight; and thereupon the court ordered that a monition issue against all persons claiming any damages against said steamer, or the owners thereof, for any embezzlement, loss, &c., citing them to appear before the court and make due proof of their claims on or before the first Monday of May, 1881, which monition was duly issued and returned.

On the 31st day of March, 1881, the petitioner herein, (Slayton,) as administrator, commenced suit in the District Court of the United States for the Eastern District of Michigan, in admiralty, against said Goodrich Transportation Company for loss occasioned by the death of Montgomery Crossman, a passenger on said "Alpena" when she foundered.

At the time the Goodrich Transportation Company filed its petition, as above stated, the said "Alpena" had not been libelled, and "the owner or owners thereof" had not been sued in any court by reason of any loss incurred or damage done on the last voyage or trip of said steamer.

DO THE RULES REFERRED TO APPLY TO SUCH CASE?

The "Supplementary Rules of Practice in Admiralty" seem to have been suggested to the court by the circumstances of the case of Norwich Company *vs.* Wright, (13 Wall., 104.)

In that case the owners of the steamer had been sued *in personam* in the District Court for the District of Connecticut, and at the same time the steamer had been libelled in the District Court for the Eastern District of New York.

While these two proceedings were pending the owners filed their petition in the court in Connecticut, asking the benefit of the statute limiting their liability.

This court, in its decision, referring to the act of 1851, says:

"The act does not state what court shall be resorted to,

" nor what proceedings shall be taken, but that the parties " or any of them may take '*the appropriate proceedings in* " '*any court* for the purpose of apportioning the sum for " ' which,' &c. Now, no court is better adapted than a court " of admiralty to administer precisely such relief. It hap- " pens every day that the proceeds of a vessel or other fund " is brought into that court to be distributed amongst those " whom it may concern. Claimants are called in by moni- " tion to present and substantiate their respective claims, " and the fund is divided and distributed according to the " respective liens and rights of all the parties. Congress " might have invested the circuit courts of the United States " with the jurisdiction of such cases by bill in equity, but it " did not. It is also evident that the State courts have not " the requisite jurisdiction. Unless, therefore, the District " Courts themselves can administer the law, we are reduced " to the dilemma of inferring that the legislature has passed a " law which is incapable of execution. This is never to be " done if it can be avoided. We have no doubt that the " District Courts, as courts of admiralty and maritime juris- " diction, have jurisdiction of the matter; and this court " undoubtedly has the power to make all needful rules and " regulations for facilitating the course of proceeding "

The court then states that in order to proceed regularly in pursuance of a petition invoking the aid of the statute to limit liability, " the court must have possession of the lim- " ited liability fund; that is, the proceeds or value of the " ship and freight. It cannot distribute a fund of which it " has not possession. If the vessel were libelled, and either " sold or appraised, and her value deposited in court, this " sum, together with the amount of the freight, (when proper " to be added,) would constitute the *res*, or fund for distri- " bution. The case would then be free from difficulty. But " the present case is a libel *in personam* in the district of " Connecticut, and the steamer has, in fact, been libelled in " the Eastern District of New York, and she or her value de- " tained there."

The court then states the proper course of proceeding in such cases, where a libel has been filed against the ship *in rem*, or the owners *in personam*, and adds:

"For aiding parties in this behalf, and facilitating pro-
"ceedings in the district courts, we have prepared some rules
"which will be announced at an early day." (P. 123-4.)

The rules relied on by the petitioner are the rules here alluded to.

They were made to avoid such difficulties as the court found in the case under consideration. They relate wholly to cases where libel or suit, or both, have been commenced.

In that case both libel and suit were pending. The ship-owner filed his petition to have his liability limited in the court where the suit was *in personam*. The court in New York had jurisdiction of the fund. This court sent the owner to the court in New York for his remedy, and then provided rules to avoid similar difficulties in the future.

The first of these rules (No. 54) relates solely to proceedings by owners desiring the benefit of the limited liability act *in cases where libel or suit has already been commenced*, and says plainly that when, under these circumstances, the owner or owners desire to claim the benefit of limitation of liability, &c., "said owner or owners shall and may file a "bill or petition in the proper district court of the United "States, *as hereinafter specified*."

And in Rule 57 such "proper district court" is specified. The owner must file his petition in the court where the vessel is libelled, but in case the vessel is not libelled, but a suit *in personam* is pending in some court, then the owner must file his petition in that court.

The rules were not intended to confer or limit jurisdiction, but simply to "facilitate proceedings" under a certain set of circumstances.

In the case out of which these rules grew, the court says that had the ship-owners paid or offered to pay the fund into the Connecticut court, that court might have acquired jurisdiction, although a libel *in rem* was pending in a District Court in New York. But the court, by its rules, says that *hereafter*, when a suit is pending in one court and a libel *in rem* in another, the owner must file his petition and take his proceedings for limiting liability in the court where the libel is pending. Why? Not because the other court might not, under certain circumstances, acquire jurisdiction and be able to furnish complete relief under the law, (for the court has just said that it might,) but to *facilitate proceedings*.

If this is not a proper construction of these rules, then ship-owners can have no limitation of their liabilities until they are sued. Suits may be brought at any time within the statutes of limitation. Should they be delayed the evidence on which the owner relied might be lost, and the owner lose his rights under the act.

If before these rules were promulgated the District Courts had jurisdiction to entertain petitions for limitation of liability where no suit or libel had been commenced, which is not questioned, then the rules did not take away that jurisdiction.

A court cannot enlarge or diminish its jurisdiction by any rule of practice.

Steamer St. Lawrence, 1 Black, 522.

II.

AS TO JURISDICTION OF THE PARTIES AND THE RES.

Claims made under a State statute by reason of loss of life on shipboard are cognizable in courts of admiralty.

En re petition of the L. I. N. S. P. & F. Trans. Co., 5 Fed. R., 599.

Holmes *vs.* O. & C. R'y Co., *Id.*, 75.

This the petitioner admits by bringing his own action in the admiralty court at Detroit.

The contract to carry the passenger is a maritime contract, and injury to the passenger, or his death from negligence, is a marine tort.

The Belfast, 7 Wall., 624.

If the place of disaster or the location of the wreck was to determine what court had jurisdiction, then the petitioner should have commenced his proceedings as administrator in the District Court for the Western District of Michigan instead of the Eastern.

Certainly suits might have been brought in the District Court for the Northern District of Illinois by persons residing in Chicago, and who made contracts there for goods and merchandise to be delivered there.

Clearly, under the rules, wherever suits may be brought either *in personam* or *in rem*, there the owner may have his proceedings to limit liability.

Had the suit of the petitioner been commenced in the Eastern District of Michigan previous to the owner of the "Alpena" filing its petition in the Court for the Northern District of Illinois, there can be no doubt that the said Court for the Eastern District of Michigan would have had jurisdiction, upon application by the owner, to determine the question of liability; yet the owner is a resident of Wisconsin, and the disaster occurred and the wreck lies within the boundaries of the Western District of Michigan.

In cases where no suits have been commenced it must be held that the ship-owner can bring his petition to limit liability in any court where he might be sued for losses by reason of the disaster. Otherwise he is at the mercy of claimants, and the law is inoperative except as put in motion by them.

Such a construction would frequently deprive the owner of the protection which the statute intended to give him.

To this extent we should be in the dilemma mentioned by the Court, in Norwich Co. *vs.* Wright—"of inferring that "the legislature had passed a law which is incapable of exe- "cution;" and upon which the Court remarks, "This is "never to be done if it can be avoided."

III.

HAS THE DISTRICT COURT JURISDICTION TO ADJUDICATE CLAIMS FOR LOSS OF LIFE?

This court has said (13 Wall., 121) that "the great object "of the law (to limit liability of ship-owners) was to en- "courage ship building, and to induce capitalists to invest "money in this branch of industry."

The reason for the law, so far as it applies to claims for "property, goods, or merchandise," is equally applicable to claims for injury to persons or loss of life. In many cases the risk would be almost wholly on this account.

Such claims were not known at the common law, and arise solely under the statutes of various States.

It was evidently the intention of the act of 1851 to limit the liability of the owner against every possible character of loss. The words are as broad as language could be used.

"The liability of the owner or owners of any ship or ves- "sel, for any embezzlement, loss, or destruction by the mas- "ter, officers, mariners, passengers, or any other person or "persons, of any property, goods, or merchandise shipped "or put on board of such ship or vessel, or for any loss, "damage, or injury by collision, *or for any act, matter, or* "*thing, loss, damage, or forfeiture, done, occasioned, or in* "*curred*, without the privity or knowledge of such owner or "owners, shall in no case exceed the amount or value of the

" interest of such owner or owners respectively in such ship " or vessel, and her freight then pending."

The owner was to be protected (further than the value of the vessel and pending freight,) against " *any act, matter,* " *or thing, loss, damage, or forfeiture done, occasioned, or* " *incurred*, without the privity or knowledge of such owner, " &c.,"—against *any* loss *occasioned* or loss *incurred.*

The language of this section, construed in view of the reason for the entire act, is sufficient to cover claims for loss of life.

But it is contended that if these words are applicable as we claim, yet they are not repeated in the succeeding sections which provide the remedy to the ship-owner, and hence are inoperative. Or, in other words, the act creates a right but gives no remedy.

A similar construction of these same sections was urged in the case of Norwich Co. *vs.* Wright. Section 3 of the act provides, among other things, that the owners' liability shall be limited " *for any loss, damage, or injury by col-* " *lision.*" These words are not repeated in the 4th section which relates to the remedy. Hence it was urged that liability could not be limited where claims were made for damage resulting from collision. But the court says: " The " close connection and dependency of the two sections re- " quire a construction to be given to the one coextensive " with that given to the other, if it can possibly be done " without violence to the language."

If the language of section *three* is broad enough to cover claims for loss of life, then section *four* must be construed to give the remedy, " if it can possibly be done without vio- " lence to the language."

The construction should always be in favor of the right granted, not against it.

Suit instituted to recover damages by reason of loss of life is not a criminal action.

Such claims must be made on the same legal basis as those for loss of goods and merchandise. There can be no recovery in either case unless negligence is found.

A party claiming for the loss of a package first proves negligence and then the value of his goods.

A party claiming for the loss of a life must also prove negligence and then the money value of the life.

The petitioner recognizes this when he sets out in his answer to the petition of the owner that his intestate earned two thousand dollars a year, and that he contributed fifteen hundred dollars a year to the support of his family; and that his family, by his loss, had suffered damages to the amount of twenty thousand dollars.

It is the property value of the life that is sought, and it is only a property interest that can be urged.

All classes of marine torts, including loss of life by negligence, are cognizable by the United States District Courts in Admiralty; and having jurisdiction of that class of cases, they must of necessity have jurisdiction to limit liability of owners.

Steamboat Co. *vs.* Chase, 16 Wal., 531.
Holmes *vs.* O. & C. R'y Co., 5 Fed. R., 75.
Holmes, Adm'r, *vs.* O. & C. R'y Co., 5 Fed. R., 523.
In re. Petition of L. I. N. S. Passenger & F't Trans. Co., *Id.*, 599.

IV.

The writ of prohibition can only be used to prevent the doing of some act which is about to be done, and can never be used as a remedy for acts already completed.

U. S. *vs.* Hoffman, 4 Wal., 158.